


FORDHAM UNIVERSITY
 THE SCHOOL OF LAW

LINCOLN CENTER CAMPUS
 150 West 62nd Street
 New York, NY 10023

Name: Howard H. Kim

Student ID: A17417401 DOB: 03-DEC SSN: *** - ** - 2658

Previous Institution(s):
BOSTON COLLEGE Sep 2012 - May 2016

COURSE #	COURSE TITLE	CRED	GRD	PTS	COURSE #	COURSE TITLE	CRED	GRD	PTS
Course Level: Juris Doctor									
Current Program									
Juris Doctor									
College : Law School									
Major : Law Day									
Comments:									
Withdrew 7/1/2020									
INSTITUTION CREDIT:									
Fall 2019									
Law School									
Law Day									
1st time adm at level-mat only									
CRGL 0103	Criminal Law 1 and 2	3.000	A-	11.001					
CVGL 0101	Civil Procedure 1 and 2	4.000	A	16.000					
LTGL 0106	Legal Writing/Resrch 1A	3.000	A	12.000					
LWGL 0105	Legal Proces and Quan Meth 1	1.000	P	.000					
PRGL 0107	Property 1	5.000	A	20.000					
Ehrs:	16.000	Qpts:	59.001						
GPA-Hrs:	15.000	GPA:	3.933						
Spring 2020									
Grades are not included in GPA due to the coronavirus.									
Law School									
Law Day									
Continuing Registration									
CNGL 0104	Contracts 1 and 2	4.000	P	.000					
FCGL 0102	Constitutional Law 1 and 2	4.000	P	.000					
FCGL 0129	Legislation & Regulation 1 & 2	4.000	P	.000					
LTGL 0106	Legal Writing and Research 1A	3.000	P	.000					
TOGL 0108	Torts 1 and 2	4.000	P	.000					
Ehrs:	16.000	Qpts:	0.000						
GPA-Hrs:	0.000	GPA:	0.000						
***** TRANSCRIPT TOTALS *****									
INSTITUTION	Ehrs:	32.000	Qpts:	59.001					
	GPA-Hrs:	15.000	GPA:	3.933					
TRANSFER	Ehrs:	0.000	Qpts:	0.000					
	GPA-Hrs:	0.000	GPA:	0.000					
OVERALL	Ehrs:	32.000	Qpts:	59.001					
	GPA-Hrs:	15.000	GPA:	3.933					
***** END OF TRANSCRIPT *****									

HOWARD HARIM KIM

 Vanessa C. Garcia
 Assistant Dean and Registrar, School of Law

Not considered official without Seal or Registrar's Signature.

Date Issued: 26-AUG-2020

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TRANSCRIPT GUIDE PRINTED ON REVERSE


**BOSTON
COLLEGE**

 140 COMMONWEALTH AVENUE
CHESTNUT HILL, MA 02467
617-552-3300

OFFICIAL TRANSCRIPT

 NAME: HOWARD H KIM
 SCHOOL: MORRISSEY COLLEGE OF ARTS AND SCIENCES
 DEGREE: BACHELOR OF ARTS 05/23/2016 CUM LAUDE
 MAJORS: POLITICAL SCIENCE, PHILOSOPHY

 STUDENT ID#: 21497343
 DATE PRINTED: 11/19/2019

DISTINCTION: COMPLETED ARTS & SCIENCES HONORS PROGRAM

PAGE: 1 OF 2

ADVANCED PLACEMENT

 BI001 BIOLOGY CORE EQUIV
 EC006 MACROECONOMICS EQUIVALENT
 EN002 ENGLISH ELECTIVE EQUIV
 EN005 ENG CORE EQUIV:LITERATURE
 HS076 AMERICAN HISTORY EQUIV
 PS001 PSYCHOLOGY CORE EQUIV

LANGUAGE PROFICIENCY

LANG PROFICIENCY-COMplete

FALL 2012 ARTS & SCIENCES

 BI200 MOLECULES&CELLS 03 B
 CH109 GENERAL CHEMISTRY I 03 B
 CH111 GENERAL CHEM LAB I 01 A-
 HP001 WESTRN CULTURL TRAD I 03 A
 HP002 WESTRN CULTURL TRAD II 03 A
 PS241 SOCIAL PSYCHOLOGY 03 B

EARNED CREDITS: 16 GPA: 3.417

SPRING 2013 ARTS & SCIENCES

 CH110 GENERAL CHEMISTRY II 03 C
 CH112 GENERAL CHEM LAB II 01 B
 HP003 WESTRN CULTURL TRAD III 03 A-
 HP004 WESTRN CULTURL TRAD IV 03 B+
 HS020 DEMOCRACY,RIGHTS&EMPIREII 03 A
 MJ021 LAW I/INTRO TO LAW 03 A

EARNED CREDITS: 16 GPA: 3.375

FALL 2013 ARTS & SCIENCES

 CH231 ORGANIC CHEMISTRY I 03 W
 CH233 ORGANIC CHEMISTRY LAB I 01 W
 HP031 WESTRN CULTURL TRAD V 03 A-
 HP032 WESTRN CULTURL TRAD VI 03 A-
 MT100 CALCULUS I 04 A-
 PL584 C.S. LEWIS 03 A-
 PO041 FUND/CONCEPTS OF POLITICS 03 A-

EARNED CREDITS: 16 GPA: 3.670

-----END OF COLUMN-----

SPRING 2014 ARTS & SCIENCES

 HP033 WESTRN CULTURL TRAD VII 03 A
 HP034 WESTRN CULTURL TRAD VIII 03 A-
 PL264 LOGIC 03 A
 PO042 INTRO TO MODERN POLITICS 03 A-
 PO626 SHAKESPEARE'S POLITICS 03 A-

EARNED CREDITS: 15 GPA: 3.802

FALL 2014 ARTS & SCIENCES

UNIV COLLEGE LONDON (ENGLAND)

 UXSAL054 MARXISM 03 B
 UXSAL054 KNOWLEDGE & REALITY 04 B+
 UXSAL056 INT'L POLITICAL ECONOMY 04 A
 UXSAL056 INTRO COMPARATIVE POLITIC 04 A

EARNED CREDITS: 15 GPA: 3.621

SPRING 2015 ARTS & SCIENCES

 THTR1170 INTRODUCTION TO THEATRE 03 A
 HONR3302 HON SEM:20THC/TRDTH II 03 A
 ACCT1021 FINANCIAL ACCOUNTING 03 B
 POLI2431 RADICAL POLITICAL ECONOMY 03 B+
 POLI4690 POL PHIL OF ALFARABI 03 A-

EARNED CREDITS: 15 GPA: 3.600

FALL 2015 ARTS & SCIENCES

 HONR3301 HON SEM:20TH C/TRDTH I 03 A
 HIST1055 GLOBALIZATION I 03 A
 SSLW1147 CONSTITUTIONAL LAW 03 A
 POLI2322 COURTS AND PUBLIC POLICY 03 B
 POLI3527 TERRORISM&POL VIOLENCE 03 A-

EARNED CREDITS: 15 GPA: 3.734

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 ISSUED TO: HOWARD H. KIM
 240 W 64TH ST. #5A
 NEW YORK NY 10023

Mary French, University Registrar

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PAGE: 2 OF 2

SPRING 2016 ARTS & SCIENCES

ARTH1104 ART HISTORY WORKSHOP II	03	A
HONR4941 WHAT IS LAW?	03	A
PHIL4477 ETHICAL PRINCIPLES	03	A
PHIL5512 PHILOSOPHY OF EXISTENCE	03	A
POLI2386 CIVIL LIBERTIES	03	A-
EARNED CREDITS: 15		GPA: 3.934

TOTAL EARNED CREDITS: 123 GPA: 3.640

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ISSUED TO: HOWARD H. KIM
240 W 64TH ST, #5A
NEW YORK NY 10023

Mary French

Mary French, University Registrar

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COLUMBIA LAW SCHOOL
435 West 116th Street
New York, NY 10027

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Re: Howard ("Howie") Kim

Dear Judge Liman:

I write to enthusiastically support the application of Howard ("Howie") Kim – a Columbia Law School rising 3L, Class of 2022 -- to be your law clerk. He is whip smart and effective and would doubtlessly do extraordinary work in your chambers.

After transferring to CLS from Fordham Law School (where he did exceptionally well as a 1L), Howie quickly focused on, among other things, courses relating to his goal of being an AUSA. That meant (for his sins) taking three courses with me. In the Fall, he took and aced Criminal Adjudication, where his excellent class participation prepared me for his terrific exam performance. Howie was always prepared and has a clean analytic mind that quickly cuts through doctrinal vagueness to get to the heart of an issue.

In the Spring, Howie took my Federal Criminal Law class. The course spends considerable time on standard doctrinal issues, i.e. the scope of "right to control" deprivations under mail/wire fraud; "obtaining" under the Hobbs Act; mens rea and cognizable rights deprivations under the criminal civil rights statutes; how the Drug Analogue statute works, etc. But it also pushes students to think about enforcement dynamics – the relationships between courts and Congress; between Congress and the Justice Department; between U.S. Attorneys' offices and Main Justice, and between prosecutors and agencies. Howard was always prepared and could be counted on for analytically sophisticated interventions, cogently expressed, and always productively connected to the comments of others. He wrote an excellent exam as well, ending up with an A in the course.

He also took the Sentencing Seminar I teach with Judge Richard Sullivan (formerly SDNY, now CA2). The seminar uses the post-Booker regime as a vehicle for exploring jurisdiction-spanning criminal sentencing issues. Howie was a standout contributor, speaking with impressive care and analytic sophistication, and always with careful consideration of, and respect for, what others had said. His level of preparation and engagement was outstanding. He also wrote a thoughtful and provocative final paper arguing that unwarranted inter-district (and perhaps even intra-district) sentencing variation could be usefully addressed were USAOs required to promulgate state-specific prosecution guidelines. The piece was quite well written and argued (however unlikely the proposal is to be adopted).

I got a better understanding of the roots of Howie's maturity and discipline when, in preparation for this letter, I learned how, though having grown up in the US, he moved with his family to South Korea for middle school. Thereafter, at age 15, he decided to return to the US on his own, living with, at first, his grandmother, and then in a rented room at a local church. He then worked throughout college to support himself. None of this left Howie with a hard edge. He has a lovely sense of humor and a genial earnestness that will serve him, and anyone he works with, extremely well.

I think you'd like Howie a lot and am confident he'd be a terrific law clerk. If there is anything else I can add, please give me a call.

Respectfully yours,

Daniel Richman

Dan Richman - drichm@law.columbia.edu - 212-854-9370

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write at the request of Howard Kim, who is seeking a position as your law clerk. I have actively encouraged Mr. Kim to pursue judicial clerkships, and was delighted when he told me that he had decided to apply to you. In the time I have come to know him, I have been consistently impressed by Howie's intellectual talent and personal temperament. I've no doubt you will be too.

I first met Howie Kim in September of last year after he enrolled in my seminar on "Human Rights and the Question of Culture." This interdisciplinary seminar puts law students in conversation with graduate and professional school students from other parts of the university. The HRQC seminar is designed to provide a structured opportunity for students to discuss, debate and defend the central ideas and methodological approaches that define human rights argument and advocacy in their respective fields. Howie quickly distinguished himself in the seminar. He was consistently prepared. He was also a frequent contributor to our weekly seminar discussions. I noticed that Howie tended to ask questions rather than make comments, and that he was a thoughtful listener who engaged generously with the ideas and insights of the other seminar members. Perhaps most pertinent for this purpose, Howie was one of the students who regularly showed up at my weekly office hours, which, like the seminar itself, were conducted online. We've had several long and wide-ranging conversations this year about law and life during which I've especially come to admire Howie's deep commitment to family and faith. I am still moved when I remember the look on his face the day Howie shared with me that he'd scheduled an appointment to get the vaccine that would enable him to spend time in person with his beloved grandmother, whom he'd not seen for over a year.

Over the course of the semester, Mr. Kim's interest in and aptitude for law and legal study were palpable. He is a skillful reader of legal texts who knows how to analyze and apply legal doctrine to specific procedural contexts. He understands the imbrication of, and the difference between, law and fact. He also grasps the importance of institutions and distinct institutional dynamics, e.g., the different role of trial and appellate courts, separation of powers, and the role and interaction of law and society.

Howie has superb research and writing skills. He submitted an excellent HRQC seminar research paper on the intersection of race, religion and human rights. Howie's project was an ambitious interdisciplinary exploration of the legal, religious and political ideas, modes of argument and interpretive philosophies that are associated with the social movement known as Christian nationalism. The paper was comprehensively researched, tightly argued and very well written. Howie has a special gift for grappling with, digesting and explaining complex ideas in clear and concise prose. He more than deserved the A he received for his work in the seminar.

On the basis of his fine performance in the HRQC seminar, Howie was one of the two students who worked most closely with me this year as a research assistant. Howie's first and most impressive quality in this regard is his superb work ethic. In addition to his raw intellectual ability, he is self-directed and mature, conscientious and meticulous, and punctual. For the last assignment I gave him, I needed to get up to speed on a raft of recently enacted state laws related to an issue I'd agreed to talk about on one of the nighttime national TV news programs. I found out about the TV appearance in the morning, and got in touch with Howie to see if he had time to do some quick research for me. Within a few hours, Howie had identified, digested and compiled a chart describing and comparing the relevant statutes and regulations. In addition to a survey the legislative landscape, however, Howie also gave me an annotated list of related materials that he thought I might find useful. He is, hands down, the best student research assistant I have had in my more than 35 years in this business. I should note, finally, that he is a kind and modest young person who has brought an open and affable energy to every interaction I have had with him.

I hope by now to have conveyed the high regard in which I hold Howie Kim. I recommend Mr. Kim to you with the very greatest enthusiasm. Should you choose to offer him the job, I have every confidence that he will come to the experience eager and ready to make the most of the opportunity. I would welcome the chance to talk with you in greater detail if that would be of help to you as you review Mr. Kim's application. Please feel free to reach out to me at 917-359-7042 or by email at kthomas@law.columbia.edu.

Yours truly,

Kendall Thomas

Kendall Thomas - kthomas@law.columbia.edu - 212-854-2288

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am an Assistant United States Attorney ("AUSA") for the Southern District of New York. I supervised Mr. Howard Kim as a law school intern at our Office during the Fall 2021 semester. During this time, I had the opportunity to oversee Mr. Kim's work on several research and writing projects, and he accompanied me and other AUSAs to various court appearances. I was impressed with Mr. Kim's judgment, intellectual curiosity, and research and writing skills.

At the start of the semester, Mr. Kim was eager to learn about the Office and the day-to-day responsibilities of an AUSA. He did not shy away from asking thoughtful questions that demonstrated his genuine interest in the law and public service. In a testament to his judgment, he actively sought out assignments from different prosecutorial units to obtain a broader sense about variety of cases and investigative techniques that are conducted by our Office. Mr. Kim also proactively communicated about the status of his work assignments, asked for guidance when appropriate, and adhered to all deadlines. These qualities demonstrated a high level of professionalism and responsibility that allowed me and my colleagues to assign exceedingly complicated and important projects.

During the semester, Mr. Kim completed numerous research and writing assignments on a diverse array of criminal law topics. In our initial assignment meetings, Mr. Kim quickly grasped the relevant factual and legal issues, which enabled him to identify the most applicable case law. Regardless of the requested written format, Mr. Kim consistently presented his research results in a well-organized and succinct manner that addressed the relevant issues. Based on his excellent research and writing skills and attention to detail throughout the semester, I entrusted Mr. Kim with the first draft of an opposition brief as his last assignment, which involved complex immigration and administrative law issues. Mr. Kim eagerly accepted the assignment and timely submitted a very good first draft. Thereafter, he carefully reviewed the proposed edits and thoroughly researched and incorporated his results in a revised submission. His final product was excellent. Throughout the entire writing and editing process, Mr. Kim was always thoughtful and communicative.

In a testament to Mr. Kim's sense of collegiality and professionalism, he also assisted our trial team with numerous time-sensitive assignments. While many of these assignments, such as reviewing exhibits and transcript citations, were not complicated or the most sought-after intern assignments, they had to be done quickly and correctly. Mr. Kim did not hesitate to volunteer his time to assist the team at any hour.

Over the course of his internship, Mr. Kim was a pleasure to work with, a reliable team member, and a welcomed addition to the Office. Please contact me if you have any additional questions.

Very truly yours,

Danielle M. Kudla
Assistant United States Attorney
Danielle.Kudla@usdoj.gov
(212) 637-2304

Danielle Kudla - Danielle.Kudla@usdoj.gov

HOWARD H. KIM

41-17 Crescent St., Apt. 10A, Long Island City, NY 11101
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WRITING SAMPLE

The enclosed writing sample is an excerpt of a motion in limine I wrote for my Fall 2021 Externship at the U.S. Attorney's Office for the Southern District of New York. It has not been edited by anyone other than me.

I have obtained approval to use this as a writing sample. Certain names and other identifying information have been changed or redacted.

This case takes place in the United States District Court for the Southern District of New York, and involves a defendant charged with (1) multiple murders through the use of a firearm and (2) conspiracy to distribute one kilogram or more of certain narcotics.

The questions presented are:

1. Whether certain medical examiner reports, crime scene photographs, and crime scene videos are admissible as their probative value is not substantially outweighed by a danger of unfair prejudice; and
2. Whether a certain statement made by the victim is admissible as the hearsay exception of a statement against penal interest.

I argue the position of the Government.

The Government respectfully submits this memorandum of law to request rulings on several evidentiary issues in advance of the trial of John Smith. Specifically, the Government seeks rulings that: (1) photographs from the crime scene showing the murder victims are admissible; (2) excerpts from a video from the crime scene showing the murder victims and layout of the rooftop are admissible; (3) photographs and autopsy reports from the medical examiner's office are admissible; and (4) the statement of one of the victims referring to an impending violent crime are admissible.

BACKGROUND

Smith is charged in Indictment 21 Cr. 100 (the "Indictment") with [various firearms and narcotics offenses, including the intentional killing of Victim #1 and Victim #2].

ARGUMENT

I. Crime Scene and Autopsy Photographs and Video Excerpts Should Be Admitted.

A. Applicable Law

1. Admissibility of Crime Scene Photographs and Video Excerpts and Medical Examiner Photographs

Courts have routinely admitted photographs of victims at the crime scene. *See United States v. Salameh*, 152 F.3d 88, 122–23 (2d Cir. 1998) (per curiam); *see also Virgin Islands v. Albert*, 241 F.3d 344 (3d Cir. 2001) (finding no abuse of discretion in admission of crime scene videotape into evidence). In *Salameh*, the Second Circuit held that the trial court did not abuse its discretion in admitting photographs of six people killed in a bombing, even though the photographs were "graphic" and "disturbing." *United States v. Salameh*, 152 F.3d at 122. These photographs included "facial close-ups of the bombing victims" as well as the "position of one of the victims

at death.” *Id.* Moreover, the Second Circuit has found autopsy reports to be admissible. *See United States v. Feliz*, 467 F.3d 227, 236–37 (2d Cir. 2006).

2. Federal Rules of Evidence 401 and 402

Evidence is “relevant” if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority.” Fed. R. Evid. 402.

3. Federal Rule of Evidence 403

Relevant evidence may still be inadmissible if its “probative value is substantially outweighed by a danger of . . . unfair prejudice . . . wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. Even if a photograph is graphic or disturbing, it can be admissible if it is “relevant to the resolution of some disputed point in a trial or otherwise aids a jury in a factual determination.” *See United States v. Salim*, 189 F. Supp. 2d 93, 98 (S.D.N.Y. 2002) (citing *United States v. Velazquez*, 246 F.3d 204, 210–11 (2d Cir. 2001)).

B. Discussion

The Government has obtained the crime scene photographs and video, each of which is probative of the nature and existence of the murders. The Government has also obtained medical examiner photographs and autopsy reports, each of which is probative of the nature and existence of the murders. The Government seeks to admit select crime scene photographs, excerpts of a crime scene video, autopsy reports, and select medical examiner photographs.

1. Crime Scene Photographs

The Government seeks to admit twenty photographs of the crime scene after the victims' bodies were discovered. Ten photographs depict different sections of the area where the victims' bodies were recovered. Seven photographs show the victims' bodies from various distances and angles. Finally, three photographs show the streets surrounding the crime scene area. The photographs are relevant because they support the Government's theory regarding the nature and existence of the murders.

The crime scene photographs have significant probative value in proving the Government's charges. First, these photographs are probative of the position and location of the bodies and the number and location of the various gunshot wounds. Second, they show the time of night and location of the crime scene, which supports the Government's theory as to when and how the victims were murdered. Finally, the photographs of the victims—in particular, the positions of their bodies—corroborate anticipated witness testimony regarding the circumstances which led to the victims' deaths. As such, the photographs have substantial probative value.

Though the photographs of the victims' bodies may be graphic in nature, they do not present dangers of unfair prejudice. “Probative evidence is not inadmissible solely because it has a tendency to upset or disturb the trier of fact.” *United States v. Salameh*, 152 F.3d 88, 123 (2d Cir. 1998) (per curiam) (citations omitted). Indeed, the Second Circuit in *Salameh* found photographs of victims that included “facial close-ups,” “victims' bodies as they lay in stretchers,” and even one victim who was “clearly pregnant” to be admissible, notwithstanding the “disturbing” and “graphic depictions of the corpses.” *Id.* at 122. Here, the photographs are not *unfairly* prejudicial, and any prejudicial effect is substantially outweighed by their probative value. *See Constantino v. Herzog*, 203 F.3d 164, 174 (2d Cir. 2000) (“Because virtually all evidence is

prejudicial to one party or another, to justify exclusion under Rule 403 the prejudice must be *unfair.*”) (emphasis in original). Accordingly, the crime scene photographs should be admitted.

2. Crime Scene Video Excerpts

The Government also seeks to admit excerpts of a crime scene video taken after the victims’ bodies were discovered. The full video begins on one side of the crime scene area and continues as the video recorder walks towards the victims’ bodies. The video shows Victim #1 lying facedown while wearing [unique clothing items] that will corroborate anticipated surveillance footage and witness testimony. The video then shows Victim #2 lying in a twisted position on the sidewalk. Next, the video pans towards a bullet casing on the ground. Afterwards, the video shows a particular blood splatter on the sidewalk nearby Victim #2’s body. The video then continues to record the street and nearby buildings where the murders took place.

The Government seeks to edit the video and offers only excerpted clips. Though the original video is approximately 20 minutes long, the Government seeks to edit the length of the video to about 3 minutes in total. The excerpts will focus on the broader landscape of the crime scene, including locations of the bullet casings, blood splatter on the sidewalk next to Victim #2’s body, and overall positions of the victims’ bodies. Importantly, the Government seeks to edit out portions of the video that are duplicative of the photographs, especially those that are close-up depictions of the victims’ bodies.

The video excerpts have significant probative value because they show the placement of various items of evidence, the unique position of the victims’ bodies, and blood splatter on the sidewalk. The excerpts also provide visualization of the layout of the scene that is not easily discernible from just the crime scene photographs. In particular, the video excerpts capture in detail the blood splatter on the sidewalk which is more difficult to see from the photographs. This

blood splatter pattern supports the Government's theory that there was a struggle between the defendant and the victims prior to their deaths. Furthermore, the video excerpts demonstrate the quiet and still atmosphere of the crime scene area, characteristics not as easily observable through the photographs. This specific type of environment supports the Government's theory that the hidden and inaccessible location was familiar to the defendant and advantageous in committing these murders to avoid any potential witnesses and law enforcement. In sum, the video excerpts have substantial probative value in acting as a supplement to—and not an alternative of—the crime scene photographs.

Importantly, the video excerpts do not present dangers of unfair prejudice, wasting time, or unnecessary cumulative evidence that outweigh their probative value. First, any danger of unfair prejudice is mitigated because many of the close-up shots of the victims are edited out, reducing their potential disturbing effects. Moreover, the video excerpts do not indicate conduct that is more inflammatory than the charged crimes here. *See United States v. Mercado*, 573 F.3d 138, 142 (2d Cir. 2009) (admitting evidence after a Rule 403 analysis where the challenged evidence was “not especially worse or shocking than the transactions charged”). Second, the video excerpts are not a waste of time because the video is substantially excerpted for length from 20 minutes to merely 3 minutes. Finally, the video has edited out images that are substantially similar to those reflected in the crime scene photographs in order to minimize any duplicative effect. The Government has taken significant measures to mitigate any dangers of unfair prejudice, waste of time, or unnecessary cumulative evidence by editing the crime scene video while preserving its substantial probative value. Accordingly, excerpts of the crime scene video should be admitted.

3. Medical Examiner Photographs and Autopsy Reports

Finally, the Government seeks to introduce two autopsy reports and a limited number of photographs from the medical examiner's office. The Second Circuit has upheld the admission of autopsy photographs and reports. *See, e.g., United States v. Velazquez*, 246 F.3d 204, 211 (2d Cir. 2001); *United States v. Feliz*, 467 F.3d 227 (2d Cir. 2006) (finding no Confrontation Clause violation when defendant did not have opportunity to cross-examine the author of the autopsy report because autopsy reports are admissible independently as both business records and public record); *United States v. James*, 712 F.3d 79 (2d Cir. 2013) (finding no Confrontation Clause violation when city chief medical examiner testified about autopsy report, even though she did not conduct autopsy herself, because routine autopsy reports were not testimonial). Here, the medical examiner photographs and autopsy reports are relevant because they support the nature and existence of the charges, such as the victims' causes of death.

The medical examiner photographs and autopsy reports have substantial probative value because they show the number and location of the gunshot wounds as well as the trajectory of the bullets. For Victim #1, the autopsy report shows two gunshot wounds to the head. One gunshot has a trajectory of back to front, while the other is of front to back. For Victim #2, the autopsy report shows five gunshot wounds to the head. Three have a trajectory of front to back, one is slightly of front to back, and one is of back to front. The autopsy reports show that the victims were otherwise in healthy condition, and that the cause of death for each victim was gunshot wounds to the head. Moreover, the differing bullet trajectories—front-to-back compared to back-to-front—indicate the defendant's clear intent to murder the victims and ensure their deaths and support the Government's theory that there was a physical altercation between the defendants and the victims.

Moreover, the medical examiner photographs and autopsy reports are not unfairly prejudicial. First, out of 65 total autopsy photographs, the Government offers only 10 photographs that are clearly about the gunshot wounds or other injuries. Second, the photographs present little to no blood, and therefore are less graphic and disturbing in nature. Finally, the Government will redact the portion of Victim #2's toxicology report which shows drug abuse, thereby further reducing the risk of prejudice. Accordingly, the medical examiner photographs and autopsy reports should be admitted.

II. The Statements of One of the Victims to His Friend Should Be Admitted.

The Government will seek to offer a statement that Victim #1 made to his friend hours before Victim 1's death. Specifically, Victim #1 stated, "[REDACTED]." Because it implicates Victim #1 in the narcotics conspiracy, this statement should be admitted as a statement against penal interest.

A. Applicable Law

1. Statements Against Interest

A statement is "hearsay" if it is offered by a party "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c)(2). Hearsay statements are generally not admissible unless provided otherwise by federal law, the Federal Rules of Evidence, or the Supreme Court. *See* Fed. R. Evid. 802.

One exception to the general hearsay rule is the statement against interest which involves a statement made by a declarant who is considered unavailable as a witness. Fed. R. Evid. 804(b)(3). A statement against interest is one that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Id.

The initial inquiry is in establishing whether the statement “would be perceived by ‘a reasonable person in the declarant’s shoes’ to be ‘detrimental to his or her own penal interest.’” *See United States v. Ojudun*, 915 F.3d 875, 885 (2d Cir. 2019) (quoting *United States v. Saget*, 377 F.3d 223, 231 (2d Cir. 2004)); *see also Williamson v. United States*, 512, U.S. 594, 603–04 (1994) (stating the Rule 804(b)(3) inquiry to be whether “a reasonable person in the declarant’s position would not have made the statement unless believing it to be true,” which must be considered “in light of all the surrounding circumstances”). Though the Supreme Court has held that non-self-inculpatory statements implicating another are inadmissible under the statement-against-interest exception, *see id.* at 600–01, the Second Circuit has recognized self-inculpatory statements that “describe acts the declarant and defendant committed jointly” to fall under the statement-against-interest exception. *See United States v. Miller*, 954 F.3d 551, 563 (2d Cir. 2020) (internal quotation marks and citations omitted). This is especially the case if the statements were not made to “minimize [the declarant’s] own culpability, shift blame onto [the defendant], or curry favor with authorities.” *United States v. Williams*, 506 F.3d 151, 155 (2d Cir. 2007) (citing *Williamson*, 512 U.S. at 601, 603).

Moreover, the statement must involve corroborating circumstances that show “both the declarant’s trustworthiness and the truth of the statement.” *See Ojudun*, 915 F.3d at 887 (quoting *United States v. Lumpkin*, 192 F.3d 280, 287 (2d Cir. 1999)) (internal quotation marks omitted). The resulting inference of trustworthiness from the corroborating circumstances “must be strong,

not merely allowable.” See *Ojudun*, 915 F.3d at 887 (quoting *United States v. Salvador*, 820 F.2d 558, 561 (2d Cir.), *cert. denied*, 484 U.S. 966 (1987)) (internal quotation marks omitted).

B. Discussion

The Government plans on calling Victim #1’s friend to testify about, among other things, Victim #1’s statement.

Victim #1’s statement saying, “[REDACTED]” should be admitted as a statement against penal interest. As an initial matter, the statement is clearly against Victim #1’s own interest. The statement shows that Victim #1 was willfully and solemnly preparing for an illegal transaction that had a high risk of extreme violence. A reasonable person in Victim #1’s position would have made this statement only if he believed it to be true because it implicates himself and exposes him to both civil and criminal liability for the illegal narcotics transaction and potential ensuing violence.

Moreover, corroborating circumstances indicate the trustworthiness of both Victim #1 and his statement. First, Victim #1 had no motive to lie when he made the statement to his friend, someone he trusted. See *Morales v. Portuondo*, 154 F. Supp. 2d 706, 727 (S.D.N.Y. 2001) (finding that the declarant was trustworthy because, among other reasons, the declarant made statements while “seeking [the other party’s] advice and guidance,” and “had every reason to believe that his conversations with them would be kept completely confidential”). Second, the statement was not made to minimize Victim #1’s own culpability or to shift blame onto the defendant or anybody else. Victim #1 was intentionally preparing for the dangerous transaction and recognized that he would have to use violence. Finally, the statement was not made to curry favor with any authorities. Victim #1 made the statement only to his friend at his own home, without any expectation that the authorities would hear or know it. In sum, Victim #1’s statement exposed him to both civil and criminal liability, and was corroborated by circumstances that indicate both his

and the statement's trustworthiness. Accordingly, Victim #1's statement, "[REDACTED]" should be admitted as a statement against penal interest.

CONCLUSION

For the foregoing reasons, the Government's motions should be granted.

Applicant Details

First Name **Suzana**
 Last Name **Kondic**
 Citizenship Status **U. S. Citizen**
 Email Address sk4691@columbia.edu
 Address

Address
Street
317 W 99
City
New York City
State/Territory
New York
Zip
10025
Country
United States

Contact Phone Number **2246239093**

Applicant Education

BA/BS From **Tulane University**
 Date of BA/BS **June 2016**
 JD/LLB From **Columbia University School of Law**
<http://www.law.columbia.edu>
 Date of JD/LLB **May 15, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Human Rights Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Environmental Moot Court**

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Gerrard, Michael
michael.gerrard@law.columbia.edu
212-854-3287

Rakoff, Jed
Jed_S_Rakoff@nysd.uscourts.gov

Lloyd, Ed
elloyd@law.columbia.edu
212-854-4376

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Suzana Kondic
317 W 99th St. #3C
New York, NY 10025
(224) 623-9093
Sk4691@columbia.edu

March 16, 2022

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am a third-year student at Columbia Law School and Executive Editor of the *Columbia Human Rights Law Review*. I write to apply for a clerkship in your chambers beginning in 2024, or any term thereafter.

My time participating in the National Environmental Law Moot Court Competition, serving on the executive board of the *Columbia Human Rights Law Review*, and advocating for nonprofit clients in Environmental Clinic has left me with strong research, writing, and editing skills. I hope to pursue a career in litigation, and I look forward to gaining the practical experience that accompanies a clerkship.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from Judge Jed Rakoff (212 805-0129, Jed_S_Rakoff@nysd.uscourts.gov); Professor Michael Gerrard (212 854-3287, mgerra@law.columbia.edu); and Professor Edward Lloyd (212 854-4376, elloyd@law.columbia.edu).

Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully,

Suzana Kondic

Suzana Kondic

SUZANA KONDIC

317 W. 99th Street, Apt. 3C, New York, NY 10025 • (224) 623-9093 • sk4691@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D. expected May 2022

Honors: Harlan Fiske Stone Scholar; James Kent Scholar

Activities: *Columbia Human Rights Law Review*, Executive Editor
 Research Assistant for Mary Nichols, Distinguished Visiting Fellow, Columbia Center for Global Energy Policy
 Teaching Fellow for Hon. Jed Rakoff, Criminal Law (Spring 2021)
 Environmental Moot Court, Coach/Editor (2020-21)
 Environmental Law Clinic (2020-21)
 Rightslink, Co-President (2020-21)
 Columbia Law Women's Association, Public Service Chair (2020-21)
 Academic Coach for Torts and Constitutional Law (2020-21)

Tulane University, New Orleans, LA

B.A. in Economics and Environmental Studies, *summa cum laude*, received May 2016

Activities: Tulane Honor Board
 Court Watch NOLA, Volunteer

Study Abroad: Tulane at CIAPA, San Jose, Costa Rica (Spring 2014)
 University of Paris 1 Pantheon-Sorbonne, Paris, France (Fall 2014)

Thesis: "Impact Investing in Forest Conservation: Too Good to be True?"

EXPERIENCE

Gibson, Dunn, & Crutcher LLP, New York, NY

Summer Associate

May – July 2021

Research and prepared memoranda related to judgment sharing in antitrust cases, *ex parte* and *in camera* proceedings, state data privacy laws, and CFTC enforcement trends. Compiled a Cyber Dignity manual for use in New York City schools to educate teenagers about digital age law.

Earthrights International, Chiang Mai, Thailand

Mekong Legal Intern (Remote)

June – August 2020

Conducted legal research related to climate change, involuntary resettlement, and environmental impact assessments in the Mekong Delta Region.

Chemonics International, Inc., Washington, D.C.

Associate, Water, Energy, and Sustainable Cities Practice

February 2018 – July 2019

Regional Business Unit Assistant, Middle East, and North Africa

August 2017 – January 2018

Supported proposals and projects related to water, energy, and urban development for international donor clients. Completed short-term assignments in the Middle East, North Africa, and Asia.

American University in Cairo (AUC), Cairo, Egypt

Presidential Intern, Office of Sustainability

August 2016 – June 2017

Oversaw large-scale data collection, analyzed emissions trends, and developed data visualization tools as a primary author of AUC's 2017 Carbon Footprint Report, published in April 2017.

LANGUAGES: Serbo-Croatian (native), French (proficient)

INTERESTS: Scuba diving, documentaries, plant-based cooking



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CLS TRANSCRIPT (Unofficial)

01/22/2022 11:58:11

Program: Juris Doctor

Suzana Kondic

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	
L6425-1	Federal Courts	Funk, Kellen Richard	4.0	
L6506-1	Gender Justice	Franke, Katherine M.	2.0	
L6040-1	International Environmental Law	Horsch, Richard	2.0	
L9061-1	P. International Arbitration	Moloo, Rahim; Mouawad, Caline	2.0	

Total Registered Points: 13.0**Total Earned Points: 0.0**

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6231-1	Corporations	Judge, Kathryn	4.0	A
L6242-1	Environmental Law	Gerrard, Michael	3.0	A
L6655-2	Human Rights Law Review Editorial Board		1.0	
L6274-1	Professional Responsibility	Kent, Andrew	3.0	B+

Total Registered Points: 11.0**Total Earned Points: 10.0**

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L9357-1	Advanced Environmental Law Clinic	Lloyd, Edward	2.0	A
L6256-1	Federal Income Taxation	Raskolnikov, Alex	4.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6169-1	Legislation and Regulation	Bulman-Pozen, Jessica	4.0	A-
L6781-1	Moot Court Student Editor II	Strauss, Ilene	2.0	CR
L8451-1	S. Advanced Climate Change Law	Gerrard, Michael	2.0	A
L6683-1	Supervised Research Paper	Gerrard, Michael	1.0	A
L6822-1	Teaching Fellows	Strauss, Ilene	1.0	CR

Total Registered Points: 16.0**Total Earned Points: 16.0**

Page 1 of 3

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L9257-1	Environmental Law Clinic	Lloyd, Edward	7.0	A
L6241-1	Evidence	Shechtman, Paul	3.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6675-1	Major Writing Credit	Gerrard, Michael	0.0	CR
L6681-1	Moot Court Student Editor I	Strauss, Ilene	0.0	CR
L6683-1	Supervised Research Paper	Gerrard, Michael	2.0	A
L6674-1	Workshop in Briefcraft [Minor Writing Credit - Earned]	Strauss, Ilene	2.0	CR

Total Registered Points: 14.0

Total Earned Points: 14.0

Spring 2020

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6410-1	Constitution and Foreign Affairs	Damrosch, Lori Fisler	3.0	CR
L6105-1	Contracts	Scott, Robert	4.0	CR
L6108-1	Criminal Law	Rakoff, Jed	3.0	CR
L6865-1	Environmental Law Moot Court	Amron, Susan; Strauss, Ilene	0.0	CR
L6121-7	Legal Practice Workshop II	Amron, Susan	1.0	CR
L6116-2	Property	Heller, Michael A.	4.0	CR

Total Registered Points: 15.0

Total Earned Points: 15.0

January 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-5	Legal Methods II: Transnational Law and Legal Process	Cleveland, Sarah	1.0	CR

Total Registered Points: 1.0

Total Earned Points: 1.0

Fall 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-2	Civil Procedure	Cleveland, Sarah	4.0	B
L6133-2	Constitutional Law	Hamburger, Philip	4.0	A
L6113-4	Legal Methods	Briffault, Richard	1.0	CR
L6115-3	Legal Practice Workshop I	Bernhardt, Sophia; Newman, Mariana	2.0	P
L6118-2	Torts	Merrill, Thomas W.	4.0	A-

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 85.0

Total Earned JD Program Points: 71.0

Page 2 of 3

Dean's Honors

A special category of recognition in Spring 2020 awarded to the most outstanding students in each course (top 3-5%).

Semester	Course ID	Course Name
Spring 2020	L6108-1	Criminal Law

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2020-21	James Kent Scholar	2L
2019-20	Harlan Fiske Stone	1L

Pro Bono Work

Type	Hours
Mandatory	15.5

NAME: Kondic, Suzana
STUDENT ID: 239005351
BIRTH DAY: July 19

ADVISING COPY

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COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS	COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
UNDERGRADUATE ACADEMIC RECORD					2013 Fall				
Secondary Schools: Grant Community High School 12 06/01/2012 Degrees Awarded: 05/14/2016 Bachelor of Arts Liberal Arts School Major 1: Economics Major 2: Environmental Studies Minor 1: French Honors: summa cum laude w/dept. honors					TULANE SCHOLAR FREN-3150 H Adv Fren Gram & Comp A- 3.00 11.01 ECON-3010 Intermed Microeconomics B 3.00 9.00 SPHU-1020 Cell, Individual & Commu A 3.00 12.00 EENS-4800 Air Pollution A 3.00 12.00 IDEV-3200 Appr To Sustainable Development A 3.00 12.00				
2012 Fall									
ADMITTED PROGRAM: Liberal Arts School Bachelor of Arts ENGL-1010 Writing CR 4.00 PSYC-1000 Introductory Psych CR 3.00 TIDE-1024 Invisible Cities A 1.00 4.00 ECON-1010 Intro to Microeconomics A- 3.00 11.01 MATH-1110 Probability & Statistics I A 3.00 12.00 ARHS-1020 Art Sur II: Renaiss to Present A 3.00 12.00 FREN-2030 Intermediate French A 4.00 16.00 FREN-2890 Service Learning: FREN 2030 S (0.00)					2014 Spring TULANE SCHOLAR EENS-4080 Geol, Geog & Env.Costa Rica B+ 3.00 9.99 EBIO-4662 Tropical Agroecosystems A 3.00 12.00 EBIO-4660 Trop Conserv & Glob Change A 3.00 12.00 IDEV-4954 Sustain Dev Cen Amer Law & Pol A- 3.00 11.01 LAST-4950 Environmental Politics & Polic A 3.00 12.00				
CURRENT: EHRS 21.0 QHRS 14.0 QPTS 55.01 GPA 3.929 CUMULATIVE: EHRS 21.0 QHRS 14.0 QPTS 55.01 GPA 3.929					CURRENT: EHRS 15.0 QHRS 15.0 QPTS 56.01 GPA 3.734 CUMULATIVE: EHRS 52.0 QHRS 45.0 QPTS 172.37 GPA 3.830				
2013 Spring					2014 Fall				
TULANE SCHOLAR EBIO-1015 Diversity of Life Lab B+ 1.00 3.33 SISE-2010 Intro Social Innov/Entrepreneu A 3.00 12.00 SISE-2890 Service Learning: SISE 2010 S (0.00) SPHU-1010 Intro To Public Health A 3.00 12.00 EBIO-1010 Diversity of Life A 3.00 12.00 ECON-1020 Intro to Macroeconomics A- 3.00 11.01 IDEV-1010 Intro To Int'l Development A- 3.00 11.01					TULANE SCHOLAR FREN-5380 Comm 1:Grammar & Communication A 3.00 12.00 FREN-5380 Economic & Poli Hist Eur Union A- 3.00 11.01 FREN-5380 Intro Gender Hist Ident Gen Se B+ 3.00 9.99 FREN-5380 Unemployment in Open Economy A 3.00 12.00				
CURRENT: EHRS 16.0 QHRS 16.0 QPTS 61.35 GPA 3.834 CUMULATIVE: EHRS 37.0 QHRS 30.0 QPTS 116.36 GPA 3.879					CURRENT: EHRS 12.0 QHRS 12.0 QPTS 45.00 GPA 3.750 CUMULATIVE: EHRS 79.0 QHRS 72.0 QPTS 274.37 GPA 3.811				
					JYA EDUCO Paris France				

* NOT APPLIED TO CURRENT PROGRAM
++ INCLUDES INITIAL STATISTICS

Page 1 of 2
12/1/2019

UNDERGRADUATE ACADEMIC RECORD

NAME: Kondic, Suzana
STUDENT ID: 239005351
BIRTH DAY: July 19

ADVISING COPY

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COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS	COURSE NUMBER	COURSE TITLE	GRADE	HOURS (ATTEMPTED) EARNED	QUALITY POINTS
2015 Spring									
TULANE SCHOLAR									
COLQ-4010	H The Future of Capitalism	A	3.00	12.00					
PHIL-3340	Humanity's Place in Nature	A-	3.00	11.01					
ECON-3330	Environment &Natural Resources	A-	3.00	11.01					
COLQ-4013	H Honors Thesis Boot Camp	S	1.00						
FREN-3210	Intro To Lit Analysis	B+	3.00	9.99					
ECON-3230	Intro to Econometrics	A	4.00	16.00					
	EHRS	QHRS	QPTS	GPA					
CURRENT:	17.0	16.0	60.01	3.751					
CUMULATIVE:	96.0	88.0	334.38	3.800					
2015 Fall									
TULANE SCHOLAR									
ECON-4990	H Honors Thesis	A	3.00	12.00					
	HONORS THESIS								
CSHS-3910	New Orleans History and People	A	3.00	12.00					
ECON-3020	Intermed. Macroeconomics	A	3.00	12.00					
FREN-4160	Translation Thry & Prac	A-	3.00	11.01					
FREN-4890	Service Learning: FREN 4160	S	(0.00)						
SOWK-2230	Guns & Gangs	A	3.00	12.00					
	EHRS	QHRS	QPTS	GPA					
CURRENT:	15.0	15.0	59.01	3.934					
CUMULATIVE:	111.0	103.0	393.39	3.819					
2016 Spring									
TULANE SCHOLAR									
ECON-4300	Regulation	A	3.00	12.00					
FREN-3110	The French Cinema	A	3.00	12.00					
EVST-5000	H Honors Thesis	A	4.00	16.00					
	HONORS THESIS								
	EHRS	QHRS	QPTS	GPA					
CURRENT:	10.0	10.0	40.00	4.000					
CUMULATIVE:	121.0	113.0	433.39	3.835					
DEGREE REQUIREMENTS COMPLETED FOR									
Bachelor of Arts									
** END OF UNDERGRADUATE RECORD **									

* NOT APPLIED TO CURRENT PROGRAM
++ INCLUDES INITIAL STATISTICS

Page 2 of 2

12/1/2019

UNDERGRADUATE ACADEMIC RECORD

Michael Gerrard - michael.gerrard@law.columbia.edu - 212-854-3287

March 16, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

This letter is written in my capacity as a long-time Adjunct Professor to very strongly recommend my former teaching assistant, Suzana Kondic, for the position of your law clerk. As the rest of this letter will amplify, Suzi has every quality needed to be an outstanding law clerk. Indeed, it is only because of my strict policy against offering a clerkship to anyone who serves as my teaching assistant that I cannot grab her for my own law clerk!

To start with the obvious, Suzi has a brilliant mind. She received her B.A. *summa cum laude* from Tulane and has been at or near the top of her class at Columbia Law School for the last three years. But I can attest to her brilliance from personal experience as well. I first got to know Suzi when she was a first year student in my Criminal Law course at Columbia in the Spring of 2020. While, because of the pandemic (then at its height in New York), most of the 100+ students in my course were graded Credit/Non-credit, there was an important exception. The top five students in these very large courses were eligible to get "Dean's Honors." Although the exams were blindly graded, I was not surprised that Suzi wound up among these distinguished top five (indeed, if I recall correctly, among the top three), for her exam answers were deeply analyzed, tightly reasoned, and written with perfect precision and clarity.

Not surprisingly, therefore, I asked Suzi to be one of my four teaching assistants in teaching Criminal Law the following year. I expect a lot from my T.A.'s: teaching weekly review sessions, devising hypotheticals for each class, grading midterms, meeting with students individually, devoting substantial time to those students needing extra help, etc., etc. But Suzi totally met the challenge, executing every aspect of the job in a helpful, astute, friendly, reliable, and totally successful way. It is exactly these qualities of conscientiousness and warmth that, when added to her brilliance, make me so certain that Suzi would be an outstanding law clerk.

As you will see from Suzi's resume, she is also a very broad-based person with a wide variety of prior experiences that will make her even more an asset to your chambers. Among much else, Suzi, prior to law school, spent a considerable amount of time in the Middle East, North Africa, and Asia, working in environmental projects in various capacities. This is an interest she has carried forward to law school through work for the Environmental Law Clinic and as a research assistant on global energy policy. Separately, she is currently serving as the Executive Editor of the Columbia Human Rights Law Review, not to mention her previous service as Co-President of Rightslink, a Columbia student organization that provides very valuable help to community-based human rights initiatives.

In short, Suzi is a marvelous person and a great soon-to-be lawyer. I cannot imagine any applicant who is more fully fit than Suzi to be a superb law clerk.

Sincerely,

Jed S. Rakoff

Jed Rakoff - Jed_S_Rakoff@nysd.uscourts.gov

ENVIRONMENTAL LAW CLINIC
MORNINGSIDE HEIGHTS LEGAL SERVICES, INC.
COLUMBIA UNIVERSITY SCHOOL OF LAW
435 WEST 116TH STREET • NEW YORK, NY 10027

TEL: 212-854-4291
ELLOYD@LAW.COLUMBIA.EDU

FAX: 212-854-3554

Dear Judge:

I am writing to recommend Suzana Kondic for a term clerkship in your chambers.

I have come to know Suzana through her work with me in the Columbia Environmental Law Clinic. The Clinic is a seven-credit course to which the students dedicate twenty one hours per week - nearly half their course load. Suzana was a student in the Clinic during the Fall 2020 semester, and she continued on to Advanced Clinic during the Spring 2021 semester. She has also continued supporting Clinic cases on a pro bono basis during her last semester of law school. I have worked very closely with her over several semesters and have gotten to know her well.

Suzana's writing is consistently clear, well-organized, and well-researched. I came to trust her ability to synthesize in-depth legal research into succinct communications for clients. She is a dedicated and passionate student of environmental law with a very strong work ethic. She is a quick learner and is adept at promptly incorporating feedback into her work. She made valuable contributions both individually and as a member of a team, often taking the initiative to advance projects substantively and administratively. I was particularly impressed by her ability to grow as a thoughtful and reflective practitioner through her time working with me.

Suzana worked with a team to write an amicus brief on behalf of a regional environmental NGO in opposition to the Trump Administration's rule that weakened state authority under the Clean Water Act's Section 401 permitting process. The team maintained close contact with the client and completed three different versions of the brief, tailored to be filed in different federal district courts across the country. Through the course of her legal research, Suzana uncovered a useful circuit split on the question of the scope of EPA's authority to regulate nonpoint sources under Section 401. She prepared a memo for the client explaining the differences between the various precedents, and guided the team on how to incorporate the cases in the different versions of the brief.

As an Advanced Clinic student, Suzana joined a team of Clinic students to write an amicus brief on behalf of a local chapter of a national environmental organization about the cleanup of the toxin PFAS. She assumed a leadership role on that team and created a work plan with deadlines to make sure that the brief was ready to file, and of a quality the clinic would be proud of, by the filing deadline. Her attention to detail, ability to motivate her peers, and organizational skills impressed me and her teammates.

Suzana is a clear, effective communicator. Her academic and personal experiences before law school allowed her to make meaningful contributions during clinic discussions, such as when she described her experiences working with communities in New Orleans during college and how that inspired her passion for environmental justice. She also took on the moot court exercise with enthusiasm, and she delivered a fifteen minute moot appellate oral argument with the confidence and ease that only follows thorough preparation.

In sum, Suzana is a pleasure to work with and diligently applies herself to any task set before her. I strongly recommend Suzana for a clerkship without hesitation, and I would be happy to discuss her application further. I can be reached at 212-854-4291 or elloyd@law.columbia.edu.



Edward Lloyd

Evan M. Frankel Clinical Professor of Environmental Law Emeritus

SUZANA KONDIC

Columbia Law School J.D. '22
(224) 623-9093
sk4691@columbia.edu

CLERKSHIP APPLICATION WRITING SAMPLE

This writing sample is an excerpt from a bench memo that I prepared as a 2L coach and editor for Columbia's team in the 2021 National Environmental Law Moot Court Competition (NELMCC). The following excerpt contains the Overview of the Problem, Statement of the Case, and analysis for Issue V, which I researched, wrote, and edited entirely on my own. My co-coaches wrote the analysis sections for Issues I-IV. We presented this memo to all of the guest judges who participated in the practice moots ahead of the competition in February 2021.

As brief background, the NELMCC publishes a fictional, yet topical, problem each year, which teams brief and argue before a fictitious United States Court of Appeals for the Twelfth Circuit. Competitors needed to be prepared to argue on behalf of any of the parties, so our 1L competitors presented all three sides during practice arguments. To help orient guest judges, this bench memo distills the key facts and issues in the problem and explains each issue from the perspective of each of the three parties: 1) the U.S. Environmental Protection Agency (EPA); 2) Climate Health and Welfare Now (CHAWN); and 3) Coal, Oil, and Gas Association (COGA). Per the rules of the competition, only decisions or documents dated prior to September 1, 2020 may be cited in briefs or oral argument. The following sections provide the necessary factual background from the record to understand the analysis of Issue V.

I. Overview Of The Problem

This case is about the regulation of climate change under the Clean Air Act (CAA). There are three relevant parties: 1) the U.S. Environmental Protection Agency (EPA), a federal agency charged with administering the CAA; 2) Climate Health and Welfare Now (CHAWN), an environmental nonprofit organization whose members are affected by climate change; and 3) Coal, Oil, and Gas Association (COGA), a trade association that represents fossil fuel companies who are concerned that greenhouse gas (GHG) regulation will affect the market for their products.

This is an appeal from the fictitious United States District Court for New Union to the fictitious Twelfth Circuit Court of Appeals, and it concerns the scope of EPA's regulatory duty and authority related to its 2009 Finding that GHGs may endanger public health and welfare. In 2009, EPA issued an Endangerment Finding that GHGs "may reasonably be anticipated both to endanger public health and to endanger public welfare." A coalition of environmental groups, including CHAWN, have petitioned EPA to list GHGs as criteria pollutants and accordingly regulate them under the CAA. CHAWN's position is that EPA has a non-discretionary duty to list GHGs, and because more than ten years have passed since the 2009 Finding, EPA has unreasonably delayed in carrying out this mandatory duty. COGA intervened as a matter of right and it takes the position that the 2009 Finding is unsupported and unlawful. EPA denies it has a mandatory duty to list GHGs as a criteria pollutant, and it cites the regulatory complexity of regulating GHGs to justify its delayed action.

EPA and COGA share the position that the portion of the 2009 Finding that found GHGs may endanger public health is invalid. However, EPA defends the validity of the Finding as it relates to public welfare. This distinction is important. Primary National Ambient Air Quality

Standards (NAAQS) are set at levels to protect public health, while secondary NAAQS are set to protect public welfare. Primary NAAQS trigger strict compliance deadlines and sanctions for noncompliance, while secondary NAAQS do not. So, EPA's current position is that its 2009 Endangerment Finding should only be upheld in that it finds GHGs threaten public welfare, so the agency is not required to issue primary NAAQS. COGA would like the court to completely strike down the 2009 Endangerment Finding, and its position is that neither a primary or secondary NAAQS is warranted. CHAWN's view, in contrast, is that the 2009 Finding is valid in full and it triggered a mandatory duty for EPA to list both primary and secondary NAAQS. CHAWN believes the agency lacks discretion to change its mind now to escape that duty.

CHAWN properly served notice of its intent to sue EPA for failure to meet its mandatory duty following the 2009 Finding on April 1, 2019. EPA took no action in response to this notice, and CHAWN filed a citizen suit under § 304(a)(2) of the Clean Air Act. COGA intervened as a matter of right under Federal Rule of Civil Procedure 24 and added a cross-claim against EPA seeking the Court to declare the 2009 Finding unlawful.

The District Court for New Union had jurisdiction under 42 U.S.C. § 7604(a), the citizen suit provision of the CAA, and federal question jurisdiction under 42 U.S.C. § 7604(a). No defendant has raised an objection to venue, but the Court of Appeals raised the question *sua sponte* and asked the parties to brief the question of whether CAA § 304(a) and CAA § 307(b) raise questions of jurisdiction and venue.

The District Court responded to cross motions for summary judgment. It granted CHAWN's motion in part, declaring that 1) the Endangerment Finding is valid as it relates to public welfare; 2) EPA has unreasonably delayed action responding to CHAWN and in listing GHGs as a criteria pollutant; and 3) EPA has a non-discretionary duty to list. The court ordered

EPA to publish a proposed rule designating GHGs as a criteria pollutant within 90 days and issue a final rule within 180 days. The court also granted COGA's motion for summary judgment in part, agreeing that the public health portion of the 2009 Finding is invalid. It ordered the 2009 Finding to be vacated to the extent it finds GHGs endanger public health.

II. Statement Of The Case

a. Statement of the Facts

Greenhouse gases (GHGs) are air pollutants whose emissions cause atmospheric reactions that steadily increase global temperatures. Record (R.) at 7. The accumulation of this group of gases in the atmosphere – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – has led to observed changes in the climate, natural disaster frequencies, and global precipitation patterns. R. at 6 n.1. The effects of climate change so far have ranged from more heat-related deaths and insect borne diseases, to reduced agricultural productivity and increased economic damage from storms and rising seas. R. at 7

Plaintiff-Appellee Climate Health and Welfare Now (CHAWN) is an environmental organization whose diverse members have been harmed by sea level rise and global warming. R. at 5. CHAWN's members include coastal property owners affected by climate change-induced flooding to young adults who are concerned about their futures. *Id.* The District Court of New Union found that CHAWN has sufficiently satisfied the requisite Article III standing requirements to bring its claims. R. 5–6.

Coal, Oil, and Gas Association (COGA) is a trade association group for the coal, oil, and natural gas industries. COGA moved to intervene as a matter of right, asserting that CHAWN's

requested relief would limit the market for the fossil fuel products that its members produce and sell. *Id.*

The core of this dispute concerns the Endangerment Finding that the U.S. Environmental Protection Agency (EPA) made in 2009, which found that GHG emissions endanger public health and welfare. R. at 6–7. This was the product of a decade-long process that CHAWN and other environmental groups began in 1999 by petitioning EPA to find that car emissions harmed human health and the environment under Section 202 of the Clean Air Act (CAA). R. at 6. This finding would have required EPA to regulate GHG emissions from mobile sources. *Id.* EPA denied the petition on September 8, 2003, claiming that GHGs did not qualify as air pollutants and citing policy reasons for why the issue of climate change would be better regulated by the legislative branch. *Id.* Litigation following this denial culminated in the U.S. Supreme Court’s decision in *Massachusetts v. EPA*, which held that GHGs fit within the definition of “air pollutants” that the EPA has authority to regulate under the CAA. *See Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). In essence, the Supreme Court foreclosed consideration of policy concerns because GHGs qualify as “air pollutants,” and it ordered the agency to respond to the environmental coalition’s petition. *Id.*

Following a change in Presidential administrations, EPA issued the 2009 Endangerment Finding that categorized GHGs as a single air pollutant that “may present an endangerment to both public health and public welfare” due to global warming’s disparate impacts. R. at 6–7. EPA then took a series of regulatory actions related to GHG emissions, starting with establishing emission limits on new passenger vehicles and trucks. R. at 7. Next, EPA adopted New Source Performance Standards and Best Available Control Technology guidance to encourage that major sources of GHG pollutants adopted the best practices in pollution control. *Id.* EPA also

adopted the Tailoring Rule to limit the scope of the permitting and review process that applies to GHG emission sources. *Id.* Finally, EPA issued the Clean Power Plan in 2015, which directed states to bring their CAA implementation plans in line with EPA’s emission reduction targets. *Id.*

In 2012, the D.C. Circuit, which Congress designated as the preferred venue for resolving challenges to national regulations, upheld the 2009 Endangerment Finding and new car standards. R. at 7, 11; see *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 102 (D.C. Cir. 2012). The Supreme Court partially struck down the Tailoring Rule and the new permitting guidelines in *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 333–334 (2014). The EPA during the Trump Presidential administration has partly reversed its earlier regulations from the period following *Massachusetts v. EPA*. R. at 7. It has repealed the Clean Power Plan, reversed the higher standards for new motor vehicles, and relaxed emissions standards for power plants. *Id.* It has not reversed the 2009 Endangerment Finding. *Id.*

EPA has not used its authority under Section 108 of the CAA to classify GHGs as criteria pollutants. *Id.* Section 108 requires EPA to publish a list of air pollutants that the Administrator determines to “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7408(a)(1)(A). Listing a pollutant as a criteria pollutant under Section 108 prompts a mandatory regulatory process. R. at 8. Within twelve months of listing the criteria pollutant, EPA must propose both primary and secondary NAAQS for the pollutant. *Id.* Primary NAAQS are set at levels to protect public health, while secondary NAAQS target public welfare. *Id.* The creation of a new primary NAAQS for a pollutant triggers each state’s obligation to submit a State Implementation Plan (SIP) indicating its plans for complying with the new NAAQS within ten years. *Id.*

CHAWN claims the 2009 Endangerment Finding imposed a non-discretionary duty on EPA under Section 108 to classify GHGs as a criteria pollutant and propose NAAQS. R. at 5. CHAWN claims that EPA has failed to fulfill this mandatory duty and that its ten-year delay following the 2009 Endangerment Finding is unreasonable. *Id.* EPA objects to the existence of a non-discretionary duty and cites policy reasons as justification for the delay. *Id.* COGA intervened to challenge the legality of the Endangerment Finding and to assert as a matter of law that climate effects do not qualify as public health impacts as contemplated by the CAA. R at 10. EPA has changed its position from 2009 to assert that GHGs pose a threat to public welfare, but not public health. R. at 5. It defends its 2009 Endangerment Finding with respect to public welfare only and joins COGA challenging the public health aspect of the Finding. *Id.* The distinction between public health and welfare here is crucial, as it determines whether EPA must issue primary or secondary NAAQS. R. at 10.

b. Procedural History

On April 1, 2019, CHAWN properly served notice of its intention to sue EPA for its unreasonable delay in designating GHGs as criteria pollutants. R. at 5. EPA did not take action in response to this notice, and CHAWN filed a citizen suit under the CAA § 304(a)(2) seeking an order to direct EPA to classify GHGs as criteria pollutants. *Id.* Judge Remus granted COGA's motion to intervene on November 30, 2019. *Id.* COGA then added a cross-claim against EPA challenging the 2009 Finding. *Id.* The parties filed cross motions for summary judgment and Judge Remus issued an order on August 15, 2020 granting CHAWN's motion for summary judgment in part and intervenor's motion in part. *Id.* The judgment declared that 1) the 2009 Finding is valid with respect to public welfare only, 2) EPA has unreasonably delayed action,

and 3) EPA has a nondiscretionary duty to list GHGs as a criteria pollutant. All parties agree on the underlying administrative record and have filed timely Notices of Appeal. R. at 2–3.

ISSUE V: DOES EPA HAVE A NON-DISCRETIONARY DUTY TO DESIGNATE GHGS AS A CRITERIA POLLUTANT UNDER CAA SECTION 108 BASED ON THE 2009 ENDANGERMENT FINDING?

A. Overview

Whether EPA is subject to the underlying duty to list GHGs as a criteria pollutant as a result of its 2009 Finding is distinct from the issue of whether EPA unreasonably delayed action in listing. The resolution of the former issue hinges on the statutory interpretation of Section 108 of the CAA.

Section 108(a)(1) of the Clean Air Act requires the EPA Administrator to publish a list of each air pollutant --

- (A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;
 - (B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and
 - (C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.
- 42 U.S.C. § 7408.

The 1970 Clean Air Amendments created an interdependent structure that depends on the initial listing of criteria pollutants to trigger the rest of the regulatory scheme. *See Train v. NRDC*, 421 U.S. 60, 66 (2d Cir. 1975). When EPA lists primary or secondary air quality standards, for example, each state is required to prepare and submit an implementation plan within three years.

42 U.S.C.A. § 7410. Congress enacted the 1970 amendments to remedy the serious problem of air pollution, which previous legislation had failed to control due to a lack of participation from states. *See ASARCO, Inc. v. EPA*, 578 F.2d 319, 321 (D.C. Cir. 1978). The 1970 CAA was intended to increase the federal government's role in air pollution control. *Id.*

When interpreting individual words of a statute, the Supreme Court has charged lower courts to consider individual words in the context of the whole statute to best carry out the will of the legislature. *See Kokoszka v. Belford* 417 U.S. 642, 650 (1974) (reasoning the Court must interpret specific terms by considering the context and purpose of the Bankruptcy Act and Consumer Credit Protection Act). The Supreme Court has also found "shall" to be mandatory language. *See Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (interpreting federal judicial procedure regulations related to multidistrict litigation). If a statute is ambiguous, an agency's interpretation may be owed *Chevron* deference. *See Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 837 (1984). The two-step *Chevron* test asks (1) "whether Congress has spoken directly to the precise question at issue," and (2), if Congress has not, then "whether the agency's answer is based on a permissible construction of the statute." *Id.* at 842-43. A prior court decision may resolve ambiguity in a statutory provision that otherwise would have been entitled to *Chevron* deference. *See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 982 (2005) ("Only a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction.").

The district court granted CHAWN's motion for summary judgment, following the Second Circuit's precedent in *NRDC v. Train* to hold that EPA has a non-discretionary duty to list GHGs as a criteria pollutant. In *NRDC v. Train*, EPA appealed a district court order to list

lead as an air pollutant under CAA §108(a)(1). EPA presented the same arguments as it does here, claiming that the phrase “but for which he plans to issue air quality criteria” in 108(a)(1)(C) gave it discretion to decide whether to list lead. EPA conceded that lead satisfied 108(a)(1)(A) and 108(1)(B), because it has an adverse effect on public health and welfare, and it results from diverse sources. After reviewing the CAA’s legislative history, purpose, and structure, the Second Circuit found that Section 108(a)(1)(C) only refers to the initial list established in 1970, and therefore if Section 108(a)(1)(A) and 108(a)(1)(B) are satisfied, the agency lacks discretion and it does have a duty to designate a criteria pollutant. *See NRDC v. Train*, 545 F.2d 320, 328 (2d Cir. 1976). *Train* stands for the proposition that Section 108 of the CAA requires the EPA Administrator to list and issue standards for each air pollutant that she or he has already found to have an adverse effect on public health or welfare. *Id.* at 325.

The District Court of New Union calls attention to the fact this case is almost fifty years old, so one tangential issue will likely be whether *Train* is still good law. More recent cases have cited *Train* for its reasoning, notably the D.C. Circuit in *Zook v. McCarthy*, 52 F. Supp. 3d 69, 74 (D.C. Cir. 2014) and *Ctr. for Biological Diversity v. EPA*, 749 F.3d 1079, 1084 (D.C. Cir. 2014). Congress assigned the D.C. Circuit as the designated venue to resolve challenges to federal regulations. 42 U.S.C § 7607(b). Neither case explicitly adopts *Train*’s holding, however, and *Train* seems to be rarely cited otherwise. Its strongest negative treatment comes from *Environmental Defense Fund v. Thomas*, where the Second Circuit classified its earlier holding in *Train* as a “purely ministerial” decision, instead of an order to make a particular policy judgment. *Envtl. Def. Fund v. Thomas*, 870 F.2d 892, 899 (2d Cir. 1989).

Summary of Party Positions:

- **CHAWN:** Yes, EPA’s 2009 Endangerment Finding has satisfied both 108(a)(1)(A) and 108(a)(1)(B), so EPA does not have any discretion over whether to list GHGs.
- **EPA:** No, the phrase “but for which he plans to issue air quality criteria under this section” in 108(a)(1)(C) allows EPA to retain discretion over listing GHGs if the Administrator does not plan to issue air quality criteria for them.
- **COGA:** No, EPA does not have a mandatory duty to list GHGs because COGA views the entire 2009 Endangerment Finding as invalid.

B. CHAWN

In general, CHAWN will argue that EPA has a non-discretionary duty under Section 108 to list GHGs as a criteria pollutant because the 2009 Finding satisfies Sections 108(a)(1)(A) and 108(a)(1)(B) of the CAA. CHAWN will argue that granting EPA any discretion under Section 108 would contradict the structure and purpose of the CAA, as evidenced by the statute’s text, legislative history, and judicial interpretation.

First, starting with the plain language of the text, CHAWN will argue that both 108(a)(1)(A) and 108(a)(1)(B) are satisfied because EPA’s 2009 Endangerment Finding concluded that GHGs were emitted by mobile sources and these emissions pose a danger to both public health and welfare. CHAWN will argue that once 108(a)(1)(A) and 108(a)(1)(B) are satisfied, EPA becomes subject to the mandatory language in the provision and loses discretion. CHAWN will likely frame EPA’s position as an improper claim of total discretion whether to ever list criteria pollutants, since the agency could theoretically claim discretion to postpone

listing indefinitely. CHAWN will equate such a level of discretion to EPA essentially having power to decide whether to comply with the CAA.

Though CHAWN will likely argue Section 108 is not ambiguous, CHAWN will also likely describe how affording EPA total discretion runs counter to the CWA's purpose and structure. To best serve the Congressional purpose of the CAA, CHAWN will read the phrase "for which he plans to issue criteria" as applying only to the Administrator's initial list (that Congress mandated EPA to create at the inception of CAA). CHAWN will likely argue that Section 108(a)(1)(C) should be read within the overall context of the CAA and Congress would not have buried a provision in Section 108 that gives the EPA total discretion over whether to list a criteria pollutant. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (holding a single provision should not be read to override the larger statute).

CHAWN's argument will likely rely heavily on the Second Circuit precedent of *NRDC v. Train*, which decided this exact issue in 1976 when faced with similar arguments from EPA. *See NRDC v. Train*, 545 F.2d 320, 325 (2d Cir. 1976). CHAWN will argue that the district court properly followed *Train* because the D.C. Circuit has recently endorsed the Second Circuit's reasoning. *See Zook v. McCarthy*, 52 F. Supp. 3d 69, 74 (D.C. Cir. 2014) (citing *Train* for the proposition that "[t]he statute makes clear that EPA's listing duty is a nondiscretionary duty to list any pollutant that EPA has determined meets the criteria in Section 108(a)(1)(A) and (B)"); *accord Ctr. for Biological Diversity v. EPA*, 749 F.3d 1079, 1084 (D.C. Cir. 2014) ("under the Act, EPA is required to regulate any airborne pollutant which, in the Administrator's judgment, 'may reasonably be anticipated to endanger public health or welfare.'"). CHAWN will urge the Court to follow *Train* and defer to Congress' intention to allow the D.C. Circuit to settle this and similar questions.

C. EPA/COGA

In general, EPA and COGA will stress the ambiguity of Section 108 and ask the Court to defer to the agency's interpretation of the statute and more generally, over its policy priorities. The parties will likely have similar arguments, but they may apply different lenses or theories of the case. EPA only disputes the Endangerment Finding as it relates to public health, so because Section 108(a)(1)(A) says ". . . endanger public health *or* welfare;" EPA cannot dispute that both Section 108(a)(1)(A) and 108(a)(1)(B) are satisfied, so its argument hinges on the existence of discretionary language in 108(a)(1)(C). COGA's position is that the entire 2009 Endangerment Finding is invalid, so it will likely argue that the Court should find the mandatory language of the statute is not triggered at all.

Starting with direct statutory reading, the parties will read the phrase in subsection 108(a)(1)(C) "but for which he plans to issue air quality criteria under this section" literally. So, if the Administrator does not "plan to issue air quality standards" by controlling emissions through some other way than NAAQS, for example, then the Administrator does not have to issue a criteria pollutant designation, even if 108(a)(1)(A) and (B) are satisfied. If the parties do concede ambiguity in the statute, they will likely cite canons of interpretation, such as the rule against surplusage, to argue that Congress does not include phrases in statutes for no reason. The parties will argue that CHAWN's reading of the phrase "for which he plans to issue air quality standards" effectively gives it no meaning, and if Congress had intended the phrase to apply only to the 1970 initial list, it would have said so explicitly. To counter the structure and purpose canons of interpretation that CHAWN may raise, the parties will likely point to other regulatory tools at EPA's disposal to manage GHGs beyond listing of criteria pollutants to trigger the NAAQS regulatory scheme.

If the Court finds ambiguity in the statute, the parties will argue that EPA is owed agency deference for its statutory interpretation of Section 108. To address *Chevron* step 1, the parties will argue that Congress has not directly spoken on the issue because of the unclear function of the phrase “but for which he plans to issue air quality criteria under this section.” See *Chevron*, 467 U.S. at 837. The parties will likely refute that any hints from legislative history about Congress’ intent should be understood as “directly spoken.” *Id.* To satisfy *Chevron* step two, the parties will argue that EPA’s construction of the statute is permissible because it is the most direct, plain text reading of Section 108. The parties will likely cite *Brand X* for its explanation that “[i]f a statute is ambiguous, and if the implementing agency’s construction is reasonable, *Chevron* requires a federal court to accept the agency’s construction of the statute, even if the agency’s reading differs from what the court believes is the best statutory interpretation.” *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005).

Lastly, the parties will likely highlight that *NRDC v. Train* is a rarely cited, 50-year-old precedent, and the district court wrongly relied on it. The D.C. Circuit may cite *Train* more recently, but no court has directly adopted the *Train* holding. The other cases simply reference *Train*’s factual situation or reasoning.

The parties may also introduce policy arguments through varied lenses. EPA will likely make arguments in favor of discretion based on limited agency resources, agency prerogative to set its own agenda, and the logistical difficulty of fitting GHGs into the established CAA regulatory scheme. EPA is charged with administering all of the federal environmental statutes and it has to respond to rampant noncompliance with the current NAAQS. COGA may draw on the argument that U.S. regulation of GHGs would serve no purpose because of the global nature of emissions that lead to climate change. Even if the U.S. completely regulates GHGs, the rise of

emissions from other nations will keep the total global level of GHGs constant, which will still lead to the harmful effects of climate change.

Suggested Questions for Oral Argument

- CHAWN: How can you dispute that Section 108 is ambiguous? Why should we follow the 2nd Circuit's interpretation from almost 50 years ago over EPA's interpretation today?
- CHAWN: If Section 108 actually gave EPA total discretion as you claim, wouldn't Congress have amended it?
- CHAWN: Why isn't EPA owed deference to set its regulatory priorities and agenda? Don't you agree that the regulation of GHGs would be an unprecedentedly complex regulatory undertaking?
- COGA/EPA: Why isn't EPA's partial reversal of its Endangerment Finding arbitrary and capricious?

Applicant Details

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http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=23101&yr=2011
 Date of JD/LLB **May 10, 2021**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Rutgers Journal of Law and Religion**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

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Internships/ **Yes**
Externships
Post-graduate
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Specialized Work Experience

Professional Organization

Organizations **Just The Beginning Foundation**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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March 4, 2022

Honorable Lewis J. Liman, U.S.D.J.
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Liman,

I am currently a law clerk for the New Jersey Superior Court, Criminal Division, for the 2021-2022 term and a recent graduate of Rutgers Law School. I have accepted an offer to clerk for Judge Sharon King, U.S.M.J., with the District of New Jersey for 2022-2023. I am writing to express my interest in a clerkship in your chambers for the 2024-2025 term.

As a law clerk, I am continuing my pursuit to be the absolute best legal researcher and writer that I can be. As a law student, I took every opportunity to improve my legal research and writing skills, which is why I sought internships offering substantial opportunities to refine them. To further improve my writing, I served as an editor of the Rutgers Journal of Law and Religion. Through my work with the District of New Jersey's Staff Attorney's (Pro Se) Office, as well as working in the chambers of the Hon. Michael A. Shipp, U.S.D.J., I have become comfortable writing at the federal level. I have written Habeas Corpus petitions along with other opinions and memorandum. In my final semester, I served as a judicial extern to the Hon. Barry T. Albin of the Supreme Court of New Jersey. These judicial opportunities, as well as others, have exposed me to several key areas of litigation, advocacy, research, writing and case preparation.

In my role as a judicial intern with Judges Kramer and Shipp, as well with Justice Albin, I learned first-hand that clerks need to be thorough and accurate when completing their duties to help ensure the success of chambers. As an intern with the Pro Se Office with the District of New Jersey, I wrote for several judges of the District and learned how to adapt my writing style to best fit that of the author. I am currently using those skills to benefit chambers now and will use them to benefit chambers in the future. I believe that I can be of service to your chambers, as I will be able to implement the training and experience, I have gained from working within several chambers. These experiences have help me successfully transition from intern to law clerk with Judge Kramer, whom I first worked with as a judicial intern after completing my first year of law school and will continue into my clerkship with Judge King.

As a law clerk, I understand the requirements for the success of chambers are not limited to research and writing, but also extend to administrative duties and being a team player with a positive attitude. With this training, I will be a successful law clerk at the District court level. Enclosed please find my resumé for your review. Thank you for consideration.

Respectfully,

Matthew Kountz

Matthew Kountz

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Education

Rutgers Law School

Camden, NJ

Juris Doctor, May 2021

Honors: Fall 2020 Dean's List Honors - Term GPA: 3.76

Activities: Staff Editor: Rutgers Journal of Law and Religion
Hon. Judith Wizmur Bankruptcy Pro Bono Project, Fall 2020
Black Law Students Association (BLSA) Secretary, Fall 2019-Spring 2020
Rutgers Law School Domestic Violence Project, Spring 2019

Purdue University

West Lafayette, IN

Bachelor of Science in Economics, December 2016

Clerkships

The Honorable Sharon King, U.S.M.J., U.S. District Court for the District of New Jersey

Camden, NJ

Law Clerk, 2022-2023

The Honorable Kurt Kramer, J.S.C., Camden County Superior Court

Camden, NJ

Law Clerk, 2021-2022

- Draft bench memorandums in preparation for motions and trials.
- Supervise the internship program within chambers.
- Perform administrative tasks for the operation of chambers.

Internships

The Honorable Barry T. Albin, J., Supreme Court of New Jersey

Somerville, NJ

Judicial Extern, Spring 2021

- Assist law clerks with research and writing assignments.
- Review petitions for certification to the Supreme Court of New Jersey.

Urban Promise High School

Camden, NJ

Marshall-Brennan Constitutional Literacy Project Teaching Fellow, Spring 2021

- Taught high school seniors different aspects of the Constitution and Constitutional law three days a week.
- Coordinated with classroom teacher to discuss lesson plans involving current Constitutional issues.

Capehart & Scatchard, P.A.

Mt. Laurel, NJ

Summer Associate, Summer 2020 – Nov. 2020

- Prepared internal memos for various areas of law including education and employment law.

Professor Sarah Ricks, Rutgers Law School

Camden, NJ

Graduate Assistant, Spring 2020

- Proofread *Current Issues in Constitutional Litigation: A context and Casebook Third Edition*.

Staff Attorney's (Pro Se Litigant) Office for the District of New Jersey

Trenton, NJ

Legal Extern, Spring 2020

- Drafted opinions on Habeas Corpus petitions pursuant to 28 U.S.C. § 2254.
- Screened and reviewed *pro se* prisoner complaints and petitions.
- Assisted staff clerks in researching, drafting, and editing opinions and memos.

The Honorable Michael A. Shipp, U.S.D.J., U.S. District Court for the District of New Jersey

Trenton, NJ

Judicial Extern, Fall 2019

The Honorable Kurt Kramer, J.S.C., Camden County Superior Court

Camden, NJ

Judicial Intern, Summer 2019

Interests

- Enthusiastic pool and billiards player.
- Swimming.

RECORD OF: MATTHEW S KOUNTZ

STUDENT NUMBER: 146001039

RECORD DATE: 06/15/21 PAGE: 1

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR GRADE
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Fall 2018 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTORATE

CIVIL PROCEDURE	24	601	501	01	4.0	B-
CONTRACTS	24	601	511	01	4.0	B
LAWR I	24	601	530	01	2.5	B-
TORTS	24	601	541	02	4.0	B

TOTAL CREDITS ATTEMPTED: 14.5

DEGREE CREDITS EARNED: 14.5 TERM AVG: 2.852 CUMULATIVE AVG: 2.852

Spring 2019 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTORATE

CONSTITUTIONAL LAW	24	601	506	02	4.0	B
CRIMINAL LAW	24	601	516	01	4.0	B+
PROPERTY	24	601	536	02	4.0	B+
LAWR II	24	601	550	01	2.5	B

TOTAL CREDITS ATTEMPTED: 14.5

DEGREE CREDITS EARNED: 29.0 TERM AVG: 3.182 CUMULATIVE AVG: 3.017

Summer 2019 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTORATE

PROFESS RESPONSIB	24	601	582	L1	2.0	B
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TOTAL CREDITS ATTEMPTED: 2.0

DEGREE CREDITS EARNED: 31.0 TERM AVG: 3.000 CUMULATIVE AVG: 3.016

Fall 2019 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTORATE

POLICE & THE PEOPLE	24	601	581	11	2.0	B+
EVIDENCE	24	601	691	01	4.0	A-
CHILDRN/PARENTS/LAW	24	601	706	01	3.0	A-
INTELL PROP: CUR IS	24	601	728	01	2.0	B+
JUDICIAL EXTERNSHIP	24	601	790	01	3.0	PA

TOTAL CREDITS ATTEMPTED: 14.0

DEGREE CREDITS EARNED: 45.0 TERM AVG: 3.546 CUMULATIVE AVG: 3.155

** CONTINUED ON NEXT PAGE **

RECORD OF: MATTHEW S KOUNTZ

STUDENT NUMBER: 146001039

RECORD DATE: 06/15/21 PAGE: 2

Spring 2020 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTORATE

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
CIV RIG LIT -CUR ISS	24	601	526	01	3.0		PA	
TRIAL ADVOCACY	24	601	651	11	3.0		PA	
CRIM PRO-INVST PROCS	24	601	655	01	3.0		PA	
PRIV LAW ESSENTIALS	24	601	787	11	2.0		PA	
PRACTICE EXTERNSHIP	24	601	795	01	2.0	P	PA	
TOTAL CREDITS ATTEMPTED:					13.0			
DEGREE CREDITS EARNED: 58.0					TERM AVG:	CUMULATIVE AVG: 3.155		

COMMENTS:

Rutgers Law School adopted a mandatory pass/no credit (PASS/NOCR) for all courses this term as a result of COVID-19 and related university transitions.

Fall 2020 RUTGERS LAW SCHOOL

PROGRAM: LAW
DEANS LIST

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
ADV LEGAL RESEARCH	24	601	522	01	2.0		A-	
PRETRIAL ADVOCACY	24	601	597	11	4.0		A-	
ESTATES AND TRUSTS	24	601	627	11	3.0		PA	
PLEA BARGAINING	24	601	679	01	3.0		A	
JRNL LAW & RELIGION	24	601	774	01	0.5	P	PA	
MARSHALL BRENNAN FE	24	601	782	01	2.0		A-	
MARSHALL BRENNAN LAB	24	601	799	01	1.0	P	PA	
TOTAL CREDITS ATTEMPTED:					15.5			
DEGREE CREDITS EARNED: 73.5					TERM AVG: 3.760	CUMULATIVE AVG: 3.281		

Spring 2021 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTORATE

CON LAW:PWRS OF PRES	23	600	644	01	2.0		B+	
CRIM PRE-TRIAL PRACT	23	600	702	01	2.0		A-	
FUND OF LEG ANALYSIS	24	601	512	11	4.0		B+	
POLICE, PRISONS & PR	24	601	615	01	2.0		A	
JRNL LAW & RELIGION	24	601	774	01	0.5	P	PA	
MARSHALL BRENNAN FEL	24	601	784	01	3.0	P	PA	

TOTAL CREDITS ATTEMPTED: 13.5

DEGREE CREDITS EARNED: 87.0 TERM AVG: 3.532 CUMULATIVE AVG: 3.320

DEGREE: JURIS DOCTOR MAY 2021

** CONTINUED ON NEXT PAGE **

RECORD OF: MATTHEW S KOUNTZ

STUDENT NUMBER: 146001039

RECORD DATE: 06/15/21

PAGE: 3

TITLE SCH DEPT CRS SUP SEC CRED PR GRADE

PROGRAM: LAW

Last Term Information

LAST TERM CREDIT HOURS: 13.5
LAST TERM CREDITS IN GPA: 10.0
LAST TERM POINTS IN GPA: 35.3
LAST TERM CUMULATIVE CREDITS IN GPA: 63.0
LAST TERM CUMULATIVE POINTS IN GPA: 209.2

*** END OF TRANSCRIPT ***

PURDUE

UNIVERSITY

ACADEMIC TRANSCRIPT

Control : 553003

Record of: Matthew S Kountz

Current Name:

Date Issued: 10-JAN-2019

Level: Undergraduate

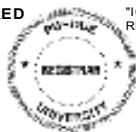
Issued To: Matthew Kountz

matthewkountz94@gmail.com

					SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Course Level: Undergraduate					Transfer Information continued			
Current Program					MA 16020	Applied Calculus II	3.00	TR
Bachelor of Science					Ehrs: 3.00	GPA-Hrs: 0.00	Qpts: 0.00	GPA: 0.00
Program : Agricultural Econ-Sales-BS					2	Ivy Tech Community College-IN		
College : College of Agriculture					MGMT 20000	Intro Accounting	3.00	TR
Campus : West Lafayette					Ehrs: 3.00	GPA-Hrs: 0.00	Qpts: 0.00	GPA: 0.00
Major : Sales And Marketing					INSTITUTION CREDIT:			
Minor : Communication					Term: Fall 2013			
Degree Awarded Bachelor of Science 17-DEC-2016					BIOL 11000	Fundamentals Biol I	4.00	C+ 9.20
Primary Degree					CHM 11100	General Chemistry	3.00	B 9.00
Program : Agricultural Econ-Sales-BS					ECON 21000	Prin Of Economics	3.00	B 9.00
College : College of Agriculture					MA 23100	Calculus For Life Sciences I	3.00	W 0.00
Campus : West Lafayette					SOC 10000	Intro Sociology	3.00	B+ 9.90
Major : Sales And Marketing					Term: Ehrs: 13.00	GPA-Hrs: 13.00	Qpts: 37.10	GPA: 2.85
Minor : Communication					Continued Good Standing			
SUBJ NO. COURSE TITLE CRED GRD PTS R					Term: Spring 2014			
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:					ANTH 20500	Human Cultural Diversity	3.00	C+ 6.90
1 Kean University-NJ					BIOL 11100	Fundamentals Biol II	4.00	B- 10.80
BIOL 1XXXX Principles Of Biology					CHM 11200	General Chemistry	3.00	A 12.00
COM 1XXXX Speech Comm-Crit Citizenship					ENGL 23800	Intro To Fiction	3.00	C+ 6.90
CS 11000 Intro To Computers					MA 22300	Intro Analysis I	3.00	B 9.00
ENGL 10100 English Composition I					Term: Ehrs: 16.00	GPA-Hrs: 16.00	Qpts: 45.60	GPA: 2.85
GS 1XXXX Transition To Kean					Continued Good Standing			
HIST 1XXXX Worlds Of History					Term: Fall 2014			
HSCI 1XXXX Crit Issue & Value Cont Health					AAS 27100	Intro African American Studies	3.00	A- 11.10
MA 1XXXX Foundations Of Mathematics					BCHM 22100	Anly Biochemistry	3.00	C 6.00
PES 1XXXX Beginning Basketball					BCHM 39000	Professional Development Sem	1.00	B 3.00
PES 1XXXX Aerobic Dancing					BCHM 56100	General Biochemistry I	3.00	C 6.00
PES 1XXXX Beginning Gymnastics					BIOL 23100	Bio III Cell Strct Fnc	3.00	D- 2.10
PSY 1XXXX General Psychology					BIOL 23200	Lab Bio III Cell Strct	2.00	C+ 4.60
Ehrs: 30.00 GPA-Hrs: 0.00 Qpts: 0.00 GPA: 0.00					***** CONTINUED ON PAGE 2 *****			
1 Camden County Coll/Blackwd-NJ					***** CONTINUED ON NEXT COLUMN *****			
CHM 11600 General Chemistry								
Ehrs: 4.00 GPA-Hrs: 0.00 Qpts: 0.00 GPA: 0.00								
1 Ivy Tech Community College-IN								

RAISED SEAL NOT REQUIRED

This official transcript does not require a raised seal.



"I CERTIFY THAT THIS IS A CORRECT TRANSCRIPT OF THE RECORD OF THE ABOVE STUDENT."

Keith B. Gabres
UNIVERSITY REGISTRAR

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Page: 1

PURDUE UNIVERSITY
Office of the Registrar
 610 Purdue Mall, West Lafayette, IN 47907-2040
 Tel: (765) 494-6165 FAX: (765) 494-0570
KEY TO TRANSCRIPT OF ACADEMIC RECORDS

ACADEMIC CALENDAR

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ACCREDITATION

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CAMPUS LOCATIONS

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 IUPUI-INDIANAPOLIS (PIU) (Joint Campus with Indiana University), Indianapolis, IN 46202 (317) 274-1501
 NORTHWEST-HAMMOND (PUC), Hammond, IN 46323, (219) 989-2210
 NORTHWEST-WESTVILLE (PNC), Westville, IN 46391, (219) 785-5299
 POLYTECHNIC STATEWIDE (TSW) (Various locations), administered through West Lafayette's Purdue Polytechnic Institute
 PURDUE DIGITAL EDUCATION (PEC) (Various locations), administered through West Lafayette

COURSE NUMBERING SYSTEM

Prior to September 1953, courses designated by letter rather than number (e.g., English A) were non-credit. Courses numbered 1 through 99 were primarily for undergraduate credit. Courses numbered 100 through 199 enrolled advanced undergraduate and some graduate students. Courses numbered 200 through 299 were for graduate students. Between September 1953 and Summer 2008, the following numbering system was used: 001-049, Precollege and deficiency courses; 050-099, Nondegree courses (e.g., agriculture short courses); 100-299, Lower-division courses normally scheduled for freshmen and sophomores; 300-499, Upper-division courses normally scheduled for juniors and seniors; 500-599, Dual-level courses that may be scheduled by juniors, seniors and graduate students for graduate credit; 600-699, Graduate-level courses. In certain circumstances, an undergraduate student may take a 600-level course. In Fall 2008, course numbers were converted to five digits, and professional-level course numbers (80000 to 89999) were added.

CREDIT TYPES

Regular Credit - All Purdue University credit is reported in terms of semester hours, whether earned during a 16-week semester or a summer session.

GRADING SYSTEMS

Effective Fall 2008, all grades were converted to the 4.0 scale as a result of the implementation of the Banner student system. Prior to Summer 1993, the University was on a 6.0 scale. For information about previous grading scales, see the Office of the Registrar Web site: www.purdue.edu/Registrar

The following shows the points assigned to each grade:

Grade	Points	Definition
A+/A	4	Highest Passing Grade
A-	3.7	
B+	3.3	
B	3	
B-	2.7	
C+	2.3	
C	2	
C-	1.7	
D+	1.3	
D	1	
D-	0.7	Lowest Passing Grade
E	0	Conditional Failure
F	0	Failure
IF	0	Unremoved Incomplete-Failing

The following grades are not included in the computation of scholastic indexes:

Regular Grade Option

I - Incomplete
 O - Incomplete (obsolete eff. Summer 1977)
 IX - Permanent Incomplete
 R - Deferred Grade (PIU)
 WF - Withdrew Failing

Pass/Not-Pass Option

P - Passing, equivalent to "C-" or higher ("C" or higher prior to Fall 2008)
 N - Not Passing
 PI - Incomplete
 PO - Incomplete (obsolete effective Summer 1977)
 IN - Unremoved Incomplete - Not Passing
 WN - Withdrew Not Passing

Zero-Credit Courses (including thesis credits prior to Fall 2008)

S - Satisfactory
 U - Unsatisfactory
 SI - Incomplete
 IU - Unremoved Incomplete - Unsatisfactory
 WU - Withdrew Unsatisfactory

Other Grades

W - Withdrew
 AU - Audit (effective Fall 2008)
 DC - Departmental Credit
 EX - Exempt
 NC - Visitor, no credit (obsolete effective Fall 2008)
 NG - Non-Graded (effective Fall 2008)
 NS - Not Submitted (effective Fall 2008)
 CR - Transfer Credit (prior to Fall 2008) Directed Credit (effective Fall 2008)
 TR - Transfer Credit (effective Fall 2008)
 TX - Transfer Credit* (effective Fall 2013)
 V - Visitor (obsolete effective Summer 1963)

INSTITUTIONAL GPAS

TERM GPA - Based upon all courses in which the student was enrolled that session and for which grade points were earned. Is listed at the end of each semester.
 LEVEL GPA - Overall grade point average that is listed at the end of each level, Undergraduate, Professional and Graduate.
 EARNED HRS - A sum of all courses of which a D- or better was obtained. This includes P, S, CR and TR.

ABBREVIATIONS AND SYMBOLS (Effective Fall 2008)

EHS - Credit hours earned.
 GPA - Hrs - Quality hours earned (all hours carrying grade points).
 QPTs - Quality points earned.
 GPA - Grade point average (computed by dividing quality points by GPA-Hrs).
 E - Indicates that the course is excluded from earned hours and GPA.
 I - Indicates that the course is included in earned hours and GPA; corresponds to a previously E (excluded) course.

SPECIAL CREDIT NOTATIONS

Students may be awarded credit at Purdue University by means other than regular enrollment in and completion of a course. Beginning January 1979, this "directed credit" is noted on the academic record as follows:
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 CEEB AP - Awarded on the basis of achievement in College Entrance Examination Board Advance Placement tests.
 CLEP CR - Awarded on the basis of achievement in the College Level Examination Program.
 CR ESTB - Awarded on the basis of CEEB Math Achievement Test score or Purdue Composite score.
 DEPT CR - Awarded on the basis of substantially equivalent experience, successful completion of a more advanced course, etc.
 Prior to January 1979, all BY EXAM (for new students), CEEB AP, CR ESTB and CLEP CR credit was combined into the single notation CR ESTB.

TRANSFER CREDIT

Course credits accepted in transfer from other institutions are listed under the appropriate headings. For undergraduate students, the course numbers and titles reflect Purdue University equivalents, with the exception of Indiana University courses taken at the jointly-administered Purdue-Indiana University campuses in Indianapolis and Fort Wayne. With the exception of Indiana University credits at the jointly-administered campuses, credits earned in the Polytechnic Statewide program and credits earned in certain study-abroad programs, no grades are transferred and transfer credit hours are not reflected in the cumulative totals. Effective Fall 2008, the following are now included in transfer credit: College Level Exam Placement (CLEP), College Entrance Examination Board Advance Placement (CEEB AP), and International Baccalaureate (IB). *Transfer credit with grades of D+, D or D- will be applied towards the State Transfer General Education Core for all Indiana public institutions. This will be annotated with a grade of TX and cannot be used to fulfill institutional degree requirements. For details, see

http://www.in.gov/cche/files/STGEC_BW_Binder_Final_5.19.15.pdf.

TO TEST FOR AUTHENTICITY: Translucent globe icons *MUST* be visible from both sides when held toward a light source. The face of this transcript is printed on gold SCRIP-SAFE® paper with the name of the institution appearing in small gold print over the face of the entire document.

PURDUE UNIVERSITY PURDUE UNIVERSITY PURDUE UNIVERSITY
 PURDUE UNIVERSITY PURDUE UNIVERSITY PURDUE UNIVERSITY PURDUE
 UNIVERSITY

ADDITIONAL TESTS: The institutional name and the word VOID appear on alternate rows as a latent image. When this paper is touched by fresh liquid bleach, an authentic document

will stain brown. A black and white or color copy of this document is not an original and should not be accepted as an official institutional document. This document cannot be

March 2017

PURDUE

UNIVERSITY

ACADEMIC TRANSCRIPT

Control : 553003

Record of: Matthew S Kountz

Date Issued: 10-JAN-2019

Level: Undergraduate

Current Name:

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:				Institution Information continued:			
Term: Ehrrs: 15.00 GPA-Hrs: 15.00 QPts: 32.80 GPA: 2.19				Term: Ehrrs: 16.00 GPA-Hrs: 16.00 QPts: 46.20 GPA: 2.89			
Continued Good Standing				Continued Good Standing			
Term: Spring 2015				Term: Summer 2016			
BCHM 29000	Experimental Design Seminar	2.00 B-	5.40	COM 10200	Intro To Com Theory	3.00 B-	8.10
BCHM 49800	Research In Biochemistry	1.00 B	3.00	COM 21200	Appr Stdy Interp Comm	3.00 B-	8.10
BCHM 56200	Gen Biochemistry II	3.00 F	0.00	HORT 30600	Hist Of Horticulture	3.00 B	9.00
STAT 30100	Elem Stat Meth	3.00 D	3.00	Term: Ehrrs: 9.00 GPA-Hrs: 9.00 QPts: 25.20 GPA: 2.80			
Term: Ehrrs: 6.00 GPA-Hrs: 9.00 QPts: 11.40 GPA: 1.27				Term: Fall 2016			
Probation				AGEC 42700	Adv Agribush Marketing	3.00 A-	11.10
Term: Summer 2015				AGEC 43000	Agr&Food Bus Strategy	3.00 B-	8.10
COM 11400	Fundament Of Speech	3.00 W	0.00	AGEC 43100	Adv Agri-Sell/Marketng	4.00 A-	14.80
CS 23500	Intro Organizatnl Comp	3.00 W	0.00	Term: Ehrrs: 10.00 GPA-Hrs: 10.00 QPts: 34.00 GPA: 3.40			
ECON 25100	Microeconomics	3.00 C	6.00	Continued Good Standing			
STAT 22500	Intro Probability Mdls	3.00 W	0.00	***** TRANSCRIPT TOTALS *****			
Term: Ehrrs: 3.00 GPA-Hrs: 3.00 QPts: 6.00 GPA: 2.00				Earned Hrs GPA Hrs Points GPA			
Term: Fall 2015				TOTAL INSTITUTION	103.00	109.00	279.40 2.56
AGEC 22000	Econ Of Agricultural Markets	3.00 B	9.00	TOTAL TRANSFER	40.00	0.00	0.00 0.00
AGEC 33000	Mgmt Methods Agr Bus	3.00 C-	5.10	OVERALL	143.00	109.00	279.40 2.56
COM 32400	Intro To Organznl Com	3.00 B	9.00	***** END OF TRANSCRIPT *****			
COM 41900	Judgment & Decision Making	3.00 B	9.00				
MGMT 20000	Intro Accounting	3.00 F	0.00				
MGMT 45500	Legal Bkgrnd Bus I	3.00 B	9.00				
Term: Ehrrs: 15.00 GPA-Hrs: 18.00 QPts: 41.10 GPA: 2.28							
Continued Good Standing							
Term: Spring 2016							
AGEC 32700	Prin Of Food & Agribus Mrkt	3.00 B	9.00				
AGEC 33100	Selling Agri Business	3.00 B	8.10				
AGEC 34000	Intl Econ Development	3.00 B-	8.10				
AGEC 42400	Finan Mgt Agr Bus	4.00 B	12.00				
AGEC 45100	Applied Econometrics	3.00 B	9.00				
***** CONTINUED ON NEXT COLUMN *****							

RAISED SEAL NOT REQUIRED

This official transcript does not require a raised seal.



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Keith B. Gabel
UNIVERSITY REGISTRAR

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Page: 2

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TO TEST FOR AUTHENTICITY: Translucent globe icons *MUST* be visible from both sides when held toward a light source. The face of this transcript is printed on gold SCRIP-SAFE® paper with the name of the institution appearing in small gold print over the face of the entire document.

PURDUE UNIVERSITY PURDUE UNIVERSITY PURDUE UNIVERSITY
 PURDUE UNIVERSITY PURDUE UNIVERSITY PURDUE UNIVERSITY PURDUE
 UNIVERSITY

ADDITIONAL TESTS: The institutional name and the word VOID appear on alternate rows as a latent image. When this paper is touched by fresh liquid bleach, an authentic document

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March 2017

Transcript

0853857 Matthew Kountz

Course/Section and Title	Grade	Credits	CEUs	Repeat	Term
BIO*1000 10 PRINCIPLES OF BIOLOGY	A-	4.00			13/SP
COMM*1402 21 SP COM AS CRITICL CITIZENSHIP	B	3.00			13/SP
CPS*1032 02 MICROCOMPUTER APPLICATIONS	B-	3.00			13/SP
ENG*1030 02 COLLEGE COMPOSITION	A-	3.00			13/SP
PED*1045 02 BEG GYMNAS:MEN'S EVENTS	A	2.00			13/SP
PSY*1000 05 GENERAL PSYCHOLOGY	A	3.00			13/SP
PED*1010 H1 BEGINNING BASKETBALL	A	1.00			12/FA
PED*1130 H1 AEROBIC DANCING	B	1.00			12/FA
COMM*1402 54 SP COM AS CRITICL CITIZENSHIP	W	0.00			12/FA
GE*1000 07 TRANSITION TO KEAN	A	1.00			12/FA
HIST*1062 10 WORLDS OF HISTORY	A	3.00			12/FA
ID*1225 36 CRIT ISS/VAL CONT HLTH	A-	3.00			12/FA
MATH*1010 02 FOUNDATIONS OF MATH	C+	3.00			12/FA
ENG*0003 PLACEMENT LEVEL ENG 1030		0.00			
CS*0006 NO DEV READING REQUIRED		0.00			
MATH*0015 NO DVLPMNTL MATH REQ'D		0.00			

Total Earned Credits 30.00

Total Grade Points 104.00

Cumulative GPA 3.467

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing to enthusiastically recommend Matthew Kountz for a clerkship in your chambers. Matthew was a student in my class, Plea Bargaining, in the fall semester of 2020. He earned the highest score in the class. I also got to know Matthew while advising him as he wrote his Note for the Rutgers Journal of Law and Religion. I have been incredibly impressed by Matthew's thoughtfulness, strong writing skills and engagement with the law. I know he will make a terrific clerk and lawyer.

In my Plea Bargaining class students do two things: they learn the law and policy that controls plea practice and then they put that knowledge to use through mock negotiations in several plea bargain simulations. Matthew was exceptional in both areas. Matthew participated in every single class. He always prepared thoroughly for class, both having done the reading and thought deeply about the issues within the materials. Matthew is a natural leader and during a difficult semester, where all learning was virtual, it was helpful to have Matthew in the class. He was skilled at asking tough questions and taking the lead in class discussions. In addition, Matthew excelled in the skills portion of the class. He prepared for his negotiations using the skills we learned in class and clearly understood the power dynamics at play in each negotiation whether he was assigned to be a defense attorney or a prosecutor.

In addition, Matthew is a beautiful writer. His memos for my class were thoroughly researched, clearly structured and well-written. He also impressed me with his writing skills as I advised him on his Note. Matthew's strong writing skills and clear leadership in the classroom make him one of the most effective communicators I have encountered in my law school classes. These skills will make him an excellent lawyer and clerk.

Matthew's resume makes clear that he is passionate about becoming a judicial clerk. He has externed with several judges and I know from our discussions that Matthew understands just how much he can learn about the law and legal profession by clerking. I know he would bring great enthusiasm to the position, as he does to all of his commitments. Matthew is a joy to work with. I give him my highest recommendation.

Sincerely,

Thea Johnson
Associate Professor of Law

Thea Johnson - thea.johnson@rutgers.edu

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing this letter of recommendation in support of Matthew Kountz and his application for a judicial clerkship. Since Matthew's enrollment in my coordinated Evidence and Trial Advocacy courses, I have had the pleasure of teaching and engaging with him on a frequent basis. Throughout my Evidence course, Matthew demonstrated that he is a very dedicated, intelligent and hard-working student. Matthew earned an A-, which was a very high grade in a course with a strict curve, and consistently demonstrated his knowledge of the course material. Matthew also passed Trial Advocacy after the Law School transitioned to a mandatory pass/fail grading system due to Covid-19.

Evidence was taught through a combination of lecture, readings, demonstration, and problems. Each student was responsible for the daily preparation of assigned problems that are designed to work through and teach certain evidentiary concepts. Each student had to be prepared to discuss all the assigned problems, sometimes totaling more than fifteen per class session. The various problems also emphasized the importance of theory choice by lawyers, as well as the interrelationship among the rules of trial procedure, ethics, and evidence. Students were evaluated by their level of preparation and understanding of these various problems and the assigned material.

Throughout the semester, Matthew was consistently called upon to answer and discuss the possible resolution of various problems. He demonstrated his thorough and careful preparation each time that he was called upon. Throughout the semester, I cannot remember a single instance where Matthew had not thought through the evidentiary issues in the assigned problems and come to the correct conclusion. One thing that stood out with Matthew is that as the semester progressed, I was able to challenge him with more difficult aspects of a problem. For example, one of our problems might be focused on one rule that we were studying. However, I was able to push him to think about the interaction of other rules on a particular problem. These were rules that he was asked to consider in preparation for his argument. For example, when we were studying hearsay, Matthew would be able to clearly articulate the part of the hearsay rule that would exclude or admit a piece of evidence. Sometimes on that type of question, I would ask him to argue whether it might be unfairly prejudicial or was improper character evidence. As the semester progressed, Matthew was able to argue the rule we were studying but incorporate rules that we had studied much earlier in the semester. The ability to go beyond the silo of just one rule is something that I do not often see throughout the semester to the level Matthew was able to demonstrate.

His performance on the final exam also demonstrated his ability to understand and apply many difficult concepts in resolving complicated evidentiary matters. His exam was exceptionally well written under intense time pressure.

Matthew was also a student in my Introduction to Trial Advocacy. We were more than halfway through the course when the Law School was required to teach online and go to a pass/fail grading system. However, Matthew was clearly working at a very high level in Trial Advocacy. This course provides students with the training necessary for effective performance in the courtroom and to deepen their understanding of evidence. The students present opening statements, direct and cross examinations, and closing arguments. Trial advocacy skills are developed through students' presentation of solutions to problems at weekly class sessions. The problems require students to examine witnesses; introduce physical, documentary, and other types of evidence; present and challenge the testimony of expert witnesses; present opening and closing arguments; and select a jury. Each class begins with both a lecture and demonstration that prepares students for the following week's performance session.

Prior to going online, Matthew was able to demonstrate all the fundamental skills of direct and cross examination. Each week, he would take the comments from faculty on his performance and incorporate them seamlessly into the following week of performance. Matthew also showed his deep understanding of case theory when delivering his opening statement and closing argument. His theory was clear while marshalling the facts that supported his chosen theory and excluding those that were irrelevant.

I am confident that Matthew's demonstrated ability will make him a successful judicial clerk. Matthew will be clerking with Judge Kurt Kramer of the New Jersey Superior Court which will add to his research and writing experience. Matthew was able to gain additional experience with his research and writing as a Staff Editor for the Rutgers Journal of Law and Religion and as intern for Justice Barry Albin of the New Jersey Supreme Court. It is my pleasure to unequivocally and without hesitation recommend Matthew. Please do not hesitate to contact me directly at (856) 225-6222 if I can be of any further assistance.

Sincerely,

J.C. Lore III
Director of Trial Advocacy
Distinguished Clinical Professor of Law

John Lore III - jclore@camden.rutgers.edu - (856) 225-6222

John Lore III - jclore@camden.rutgers.edu - (856) 225-6222

March 04, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I recommend Matthew Kountz for a federal judicial clerkship for 2022-23. As a former federal law clerk, I can confidently predict that Matthew is likely to succeed in the role.

From 2021-22, Matthew will clerk for a New Jersey trial court, the Honorable Kurt Kramer. In fact, Judge Kramer re-hired Matthew after his successful summer internship in the Judge's chambers in 2019. In addition to that exposure to the work of a judicial law clerk, Matthew externed in Spring 2021 for the Honorable Barry Albin of the New Jersey Supreme Court. Further, Matthew has two different experiences with the work of federal courts. He externed in Fall 2019 for the Honorable Michael Shipp of the U.S. District Court for the District of New Jersey. In addition, he externed in Spring 2020 in the federal court office responsible for pro se litigants.

During the entirety of his 2L year, I worked closely with Matthew in the Marshall Brennan Constitutional Literacy Fellowship. The law student Fellows spend the first semester learning federal constitutional law and practicing teaching techniques. The Fellows spend the second semester teaching high school students in Camden, New Jersey. Matthew taught his high school students remotely, via Zoom. His classes focused on First, Fourth, and Fourteenth Amendment constitutional rights of juveniles. We chose Matthew in a competitive process to be a Constitutional Literacy Fellow. Matthew rewarded our confidence.

I first met Matthew as a student in my course Current Issues in Civil Rights Litigation. The course integrates the teaching of law practice skills with the teaching of federal constitutional law and 42 U.S.C. §1983 doctrine. The class focuses on Fourth, Eighth, and Fourteenth Amendment litigation and on Section 1983 defenses. Matthew's insightful comments first brought him to my attention.

The Civil Rights Litigation course is structured around 10 law practice simulations that require students to step into realistic attorney roles, such as counseling a client on the next step in litigation, negotiating a settlement, or conferencing with a trial court judge on how to charge the jury. Matthew's performance in two complex law practice simulations evidenced a nuanced understanding of the constitutional and statutory doctrines. Despite the COVID-caused abrupt switch to online classes, Matthew remained an engaged and thoughtful participant. No grades were assigned as Rutgers mandated Pass/Fail grading.

I would be delighted to speak with you further about Matthew Kountz's application.

Sincerely,

Sarah E. Ricks
Distinguished Clinical Professor of Law

Sarah E. Ricks - sricks@camden.rutgers.edu - (856) 225-6419

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

XXXXXXXX XXXXXX,

Petitioner,

v.

Attorney General of the
State of New Jersey, et al.

Respondent.

Civ. Action No. XX-XXXXXX(XXX)

OPINION

District Judge

Petitioner is a state prisoner currently incarcerated at New Jersey State Prison. He is proceeding with a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Before the Court is Respondent's motion to dismiss petition as untimely. For the reasons set forth below, the Court will deny the Respondent's motion to dismiss.

I. BACKGROUND

On December XX, 1996, the Superior Court of New Jersey, Camden County sentenced Petitioner to a term of sixty years imprisonment with 85% parole ineligibility, totaling fifty-one years without parole for sexual assault and related charges. Petitioner filed a Notice of Appeal with the New Jersey Superior Court, Appellate Division on January XX, 1997, and the Appellate Division affirmed the trial court's decision on April XX, 1999 but remanded for resentencing. *Id.* Petitioner was resentenced to a term of sixty years imprisonment without the eligibility of parole.

Petitioner filed for a petition of certification from the Supreme Court of New Jersey on June XX, 1999, which was denied by the Court on October XX, 1999. Petitioner did not seek certiorari from the United States Supreme Court. *Id.* at 5.

Petitioner then filed a *pro se* amended petition for post-conviction relief (“PCR”) with the New Jersey Superior Court on November XX, 2000, which the court denied on May XX, 2001. On June XX, 2004, Petitioner filed a PCR appeal, and the Appellate Division reversed the PCR court’s denial of Petitioner’s PCR and remanded for a new PCR hearing. On April XX, 2005 the PCR court denied Petitioner’s PCR and motion to compel.¹ On July XX, 2005, Petitioner appealed the denial of his PCR to the Appellate Division. The Appellate Division affirmed the denial of Petitioner’s PCR on December XX, 2005.

On December XX, 2007, Petitioner filed a Notice of Petition for Certification with the New Jersey Supreme Court. The New Jersey Supreme Court denied Petitioner’s petition for certification on May XX, 2008. Petitioner submitted the present habeas petition on December XX, 2008.

II. STANDARD OF REVIEW

“Habeas corpus petitions must meet heightened pleading requirements.” McFarland v. Scott, 512 U.S. 849, 856 (1994). “A petition must specify all the grounds for relief and set forth facts supporting each of the grounds thus specified.” McArthur v. State, No. 05-5745, 2006 WL 1044991, at *1 (D.N.J. Apr. 17, 2006). A court addressing a petition for writ of habeas corpus “shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled there.” 28 U.S.C. § 2243.

Thus “[f]ederal courts... [may] dismiss summarily any habeas petition that appears legally insufficient on its face.” McFarland, 512 U.S. at 856. More specifically, a district court may “dismiss a [habeas] petition summarily when it plainly appears from the face of the petition and any exhibits...that the petitioner is not entitled to relief.” Lonchar v. Thomas, 517 U.S. 314, 320 (1996) (quoting Habeas Corpus Rule 4).

III. DISCUSSION

¹Petitioner also filed a motion to compel the production of DNA evidence for testing which was also denied.

A. Statutory Tolling

As mentioned above, Respondents contend that the instant petition is untimely. Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a “[one]-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.” 28 U.S.C. § 2244 (d)(1). That limitation period begins to run when the criminal judgment becomes “final”². A state court criminal judgment becomes “final” within the meaning of § 2244(d)(1) at the conclusion of direct review or at the expiration of time for seeking such review. See Swartz v. Meyers, 204 F.3d 417, 419 (3d Cir. 2000); see also 28 U.S.C. § 2244(d)(1)(A).

The filing of a post-conviction relief petition may statutorily toll (suspend) the running of the one-year habeas limitations period. See 28 U.S.C. § 2244(d)(2) (“The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.”). A prisoner’s application for state collateral review is “‘properly filed’ when its delivery and acceptance are in compliance with the applicable laws and rules governing filings.” Jenkins v. Superintendent of Laurel Highlands, 705 F.3d 80, 85 (3d Cir. 2013) (quoting Artuz v. Bennett, 531 U.S. 4, 8 (2000)).

As discussed above, Petitioner completed his direct appeals on October 9, 2009, and his judgment became final after the 90 day period in which he could have sought a writ of certiorari from the United States Supreme Court on January XX, 2000. Petitioner filed for PCR on January XX, 2000, resulting in 14 days of untolled time. The remainder of the Petitioner’s time to file a habeas petition was tolled.

² The statute states in full, that the limitation period shall run from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). There is no indication that any subsection other than (A) is applicable here.

The PCR court denied Petitioner's petition on May XX, 2001, thereafter, Petitioner had 45 days or until June XX, 2001, to appeal the decision of the PCR Court. Petitioner did not file an appeal until January XX, 2002, resulting in 195 days of untolled time. While his appeal of the denial of the PCR was pending in the Appellate Division, the remainder of Petitioner's time to file a habeas petition was tolled.

On June XX, 2004, the Appellate Division reversed and remanded the PCR court's denial of Petitioner's PCR. Petitioner's PCR was represented along with a Motion to Compel Post Conviction DNA testing and on April XX, 2005, the PCR court again denied the PCR, as well as the Motion to Compel. Petitioner had 45 days from the denial of his PCR, or until June XX, 2005 to file a timely Notice of Appeal in the Superior Court of New Jersey, Appellate Division. However, Petitioner did not file a Notice of Appeal until July XX, 2005, resulting in 35 days of untolled time. While the appeal of his second denial of his PCR was pending in the Appellate Division, Petitioner's time to file a habeas petition was tolled.

After filing his July XX, 2005 appeal, Petitioner's motion was denied on December XX, 2007. On December XX, 2007, Petitioner applied for Notice of Certification to the New Jersey Supreme Court. This notice was denied on May XX, 2008. Petitioner had until September XX, 2008, to file a timely habeas petition to this court; however, Petitioner did not file his habeas petition until December XX, 2008, resulting in 219 days of untolled time. Based on the above calculations, Petitioner accumulated a total of 463 days of untolled time. Accordingly, Petitioner exceeded the AEDPA's one-year statute of limitations.

B. Equitable Tolling

If a petitioner can demonstrate extraordinary circumstances to warrant "equitable tolling," then a court may relax the one-year limitations period. Jenkins, 705 F.3d at 84-85. "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); see also Jenkins, 705 F.3d at 89. "There are no bright lines in determining whether equitable tolling is warranted in a given case". Pabon v. Mahanoy, 654 F.3d 385, 399 (3d Cir.

2011). The Third Circuit has explained that “equitable tolling is appropriate when principles of equity would make rigid application of a limitation period unfair, but that a court should be sparing in its use of the doctrine.” Ross v. Varano, 712 F.3d 784, 799 (3d Cir. 2013) (citing Pabon, 654 F.3d at 399). For equitable tolling to apply, the Third Circuit requires a showing of reasonable diligence:

[t]his obligation does not pertain solely to the filing of the federal habeas petition, rather it is an obligation that exists during the period appellant is exhausting state court remedies as well...The fact that a petitioner is proceeding pro se does not insulate him from the reasonable diligence inquiry and his lack of legal knowledge or legal training does not alone justify equitable tolling.

Id. at 799-800 (internal quotations omitted) (citations omitted).

A court may find extraordinary circumstances where: (1) the petitioner has been actively misled; (2) the petitioner has in some extraordinary way been prevented from asserting his rights; or (3) where the petitioner has timely asserted his rights in the wrong forum. See Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001).

In the instant case, Petitioner states that “the Office of the Public Defender failed to file the [P]ost [C]onviction [Notice of Appeal] in a timely manner, despite Petitioner’s letter request that they do so.” In regard to Petitioner’s first appeal from the PCR court as mention *supra*, Petitioner had 45 days to file a timely appeal, or until June XX, 2001; however, a Notice of Appeal was not filed on his behalf until January XX, 2002. The Notice of Appeal filed by the Office of the Public Defender reads in part:

Our file indicates that the [Petitioner] timely requested an appeal by Attorney transmittal for on June XX, 2001. Since the [Petitioner] herein timely requested an appeal, and the reason for delay in filing same is not his fault, it is most respectfully requested that the accompanying prepared Notice of Appeal be filed, as within time.

Id. at 3

Given that Petitioner sought counsel from the Office of the Public Defender, who was representing him at this time, for a Notice of Appeal to be filed on his behalf, this Court finds good reason to grant equitable tolling in this matter. “[T]his Court agrees that the overwhelming caseload and lack of resources of the New Jersey [Office of Public Defender], recognized by the PCR Courts when they accept

late filings on this basis, is an extraordinary circumstance that may prevent a prisoner from timely filing a PCR petition.” Harris v. Nogan, No. 17-259, 2017 WL 5725054, at *5 (D.N.J. Nov. 28, 2017). Petitioner timely notified the Office of the Public Defender of his desire to appeal. Had the Office of the Public Defender filed a Notice of Appeal and requested an extension, Petitioner’s statute of limitations would not have exceeded its one year limit.

Petitioner’s statute of limitations decreased by 195 days between June XX, 2001, and January XX, 2022, when petitioner requested that his Notice of Appeal be filed on June XX, 2001. Accounting for those 195 days, petitioner retains 97 of his 365 days remaining prior to the submission of his habeas petition.

V. Conclusion

For the foregoing reasons discussed above, the Court denies Respondent’s motion to dismiss this petition as untimely.

Applicant Details

First Name **Gabrielle**
 Last Name **Leeman**
 Citizenship Status **U. S. Citizen**
 Email Address gleeman@law.gwu.edu
 Address

Address
Street
360 H ST NE, APT 434
City
Washington
State/Territory
District of Columbia
Zip
20002
Country
United States

Contact Phone Number **561-699-6745**

Applicant Education

BA/BS From **University of Florida**
 Date of BA/BS **May 2016**
 JD/LLB From **The George Washington University Law School**
<https://www.law.gwu.edu/>
 Date of JD/LLB **May 1, 2022**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **The George Washington Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s)

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Lanpher, Mark
mark.lanpher@shearman.com
Conrath, Craig
Craig.Conrath@usdoj.gov
Berman, Paul
pberman@law.gwu.edu
202-569-6837

This applicant has certified that all data entered in this profile and any application documents are true and correct.

March 24, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am a law student at The George Washington University Law School and will be graduating in May 2022. I am writing to apply for a judicial clerkship with you for the 2024-2025 Term. I am enclosing a resume, transcript, and writing sample. Enclosed as well are recommendations from Professor Paul Berman, Mark Lanpher, and Craig Conrath. Thank you for your consideration.

Respectfully,

Gabrielle Leeman

GABRIELLE LEEMAN

gleeman@law.gwu.edu – 561.699.6745 – 360 H Street NE, Apt. 434, Washington, DC 20002

EDUCATION:

The George Washington University Law School, Washington, DC **May 2022**

Juris Doctor candidate, GPA: 3.74

Honors: George Washington Scholar (Fall 2021), Dean's Recognition for Professional Development

Journal: *The George Washington Law Review* (Member)

Gabrielle Leeman, *Equal Prosecution For All: Violent Extremism at the Intersection of Hate Crime and Terrorism*, 12 AM. UNIV. NAT'L SEC. L. BR. 35 (2021)

Skills Board: Moot Court Board (Member), Mock Trial Board (Member), 1L Mock Trial Competition (Quarterfinalist)

Clinic: Criminal Appeals and Post-Conviction Services Clinic (Fall 2021-Spring 2022)

University of Florida, Gainesville, FL **May 2016**

University of Florida Honors College, graduated *cum laude*, GPA: 3.75

Bachelor of Arts, Criminology and Law; Bachelor of Science, Psychology; Minor, Anthropology

EXPERIENCE:

Shearman & Sterling LLP, Washington, DC **May 2021-July 2021**

Summer Associate, Litigation and International Arbitration Practices

- Performed research and drafted findings for various international arbitrations, identified impacts caused by new and proposed legislation across South American countries, and assisted in preparing related client presentations
- Reviewed documents and summarized multiple issues identified in an FCPA investigation
- Drafted a memorandum considering the strength of plaintiff's motion and identified strongest counterarguments
- Assisted in the review and preparation of deposition materials, made recommendations on whether to pursue certain potential deponents, and performed legal research on the admissibility of depositions at trial

U.S. District Court for the District of Columbia, Washington, DC **August 2020-November 2020**

Judicial Intern, Hon. Timothy J. Kelly

- Conducted legal research and wrote memoranda and draft opinions on a variety of matters before the court
- Communicated findings and discussed recommendations with Judge Kelly and law clerks

U.S. Attorney's Office, District of Maryland, Baltimore, MD **June 2020-August 2020**

Law Clerk

- Drafted procedural and substantive motions filed with the District Court for the District of Maryland
- Analyzed arguments and identified counterarguments in preparation for motions and evidentiary hearings, and made recommendations on likely court findings regarding case-specific facts
- Performed legal research and prepared memoranda evaluating the merits of bringing an action under relevant statutes (including FCA, Anti-Kickback Act, RICO, obstruction of justice, and false statements)

Department of Justice, Washington, DC **August 2016-August 2019**

Paralegal Specialist, Office of the Deputy Attorney General

- Drafted and organized briefing materials, data summaries, and presentations for Department of Justice leadership
- Assisted in the creation of policy guidance and reports and testimony for submission to Congress as part of the Department's Consumer Fraud, Elder Justice, Forensic Science, and Violent Crime initiatives

Paralegal Specialist, Antitrust Division

- Oversaw large team as lead paralegal for the AT&T-Time Warner merger investigation and trial, organized case files, contributed to the development of case theories, and participated in decisions regarding trial strategy
- Reviewed external documents for evidence and prepared for and participated in key witness interviews, depositions, and trial fact and expert witness examinations
- Drafted and edited sections of expert reports, trial briefs, witness examination outlines, and findings of fact
- Conducted legal and market research for analysis of potentially anticompetitive activities and drafted corresponding memoranda outlining findings and recommendations

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G46602368
Date of Birth: 16-JUN

Date Issued: 22-MAR-2022

Record of: Gabrielle Leeman

Page: 1

Student Level: Law
Admit Term: Fall 2019

Issued To: GABRIELLE LEEMAN
GLEEMAN@GWU.EDU

REFNUM:70539636

Current College(s): Law School
Current Major(s): Law

EXPERIENTIAL REQUIREMENT MET

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2019

Law School
Law

LAW 6202	Contracts	4.00	B+	
LAW 6206	Torts	4.00	A	
LAW 6212	Civil Procedure	4.00	B+	
LAW 6216	Fundamentals Of Lawyer I	3.00	B+	
Ehrs	15.00 GPA-Hrs	15.00 GPA	3.511	
CUM	15.00 GPA-Hrs	15.00 GPA	3.511	
THURGOOD MARSHALL SCHOLAR				
TOP 16% - 35% OF THE CLASS TO DATE				

Spring 2020

Law School
Law

LAW 6208	Property	4.00	CR	
LAW 6209	Legislation And Regulation	3.00	CR	
LAW 6210	Criminal Law	3.00	CR	
LAW 6214	Constitutional Law I	3.00	CR	
LAW 6217	Fundamentals Of Lawyer II	3.00	CR	
Ehrs	16.00 GPA-Hrs	0.00 GPA	0.000	
CUM	31.00 GPA-Hrs	15.00 GPA	3.511	
Good Standing				

...
DURING THE SPRING 2020 SEMESTER, A GLOBAL PANDEMIC
CAUSED BY COVID-19 RESULTED IN SIGNIFICANT
ACADEMIC DISRUPTION. ALL LAW SCHOOL COURSES FOR
SPRING 2020 SEMESTER WERE GRADED ON A MANDATORY
CREDIT/NO-CREDIT BASIS.

DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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Fall 2020

Law School
Law

LAW 6230	Evidence	3.00	A	
LAW 6402	Kirkpatrick Antitrust Law	3.00	A	
LAW 6520	Kovacic International Law	4.00	A	
LAW 6668	Steinhardt Field Placement	2.00	CR	
LAW 6669	Judicial Lawyering	2.00	A	
Ehrs	14.00 GPA-Hrs	12.00 GPA	4.000	
CUM	45.00 GPA-Hrs	27.00 GPA	3.728	
Good Standing				
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

Spring 2021

LAW 6360	Criminal Procedure	4.00	A	
LAW 6400	Saltzburg Administrative Law	3.00	A+	
LAW 6521	Pierce International Money	3.00	A	
LAW 6870	Laundrying Smith	2.00	B+	
LAW 6875	National Security Law	2.00	B+	
Ehrs	14.00 GPA-Hrs	14.00 GPA	3.881	
CUM	59.00 GPA-Hrs	41.00 GPA	3.780	
Good Standing				
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

Fall 2021

LAW 6218	Prof Responsibility & Ethics	2.00	B	
LAW 6364	Szabo White Collar Crime	3.00	A-	
LAW 6625	Eliason Criminal Appeals Clinic	6.00	A-	
LAW 6885	Rose Transnational Security	2.00	A	
Ehrs	13.00 GPA-Hrs	13.00 GPA	3.615	
CUM	72.00 GPA-Hrs	54.00 GPA	3.741	
Good Standing				
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

***** CONTINUED ON PAGE 2 *****



E. Leeman
University Registrar

This transcript processed and delivered by Parchment

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G46602368

Date of Birth: 16-JUN

Date Issued: 22-MAR-2022

Record of: Gabrielle Leeman

Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
Fall 2020				
Law School				
Law				
LAW 6657	Law Review Note	1.00	-----	
	Credits In Progress:	1.00		
Spring 2021				
LAW 6657	Law Review Note	1.00	-----	
	Credits In Progress:	1.00		
Fall 2021				
LAW 6658	Law Review	1.00	-----	
	Credits In Progress:	1.00		
Spring 2022				
LAW 6232	Federal Courts	3.00	-----	
LAW 6351	Reading Group	1.00	-----	
LAW 6625	Criminals Appeals Clinic	6.00	-----	
LAW 6641	External Comp - Moot	1.00	-----	
	Court			
LAW 6658	Law Review	1.00	-----	
LAW 6869	Selected Topics In Nat'L	3.00	-----	
	Sec			
	Credits In Progress:	15.00		
***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	72.00	54.00	202.00	3.741
OVERALL	72.00	54.00	202.00	3.741
***** END OF DOCUMENT *****				



Edmundson
University Registrar

This transcript processed and delivered by Parchment

Gabrielle S Leeman ▾

Basis of Admission: Beginning Freshman

Residency Status: Florida Resident/Tuition (F)



Undergraduate Record

College: The College of Liberal Arts and Sciences Degree: Bachelor of Arts
Major: Criminology
Degree: Bachelor of Science
Major: Psychology
Minor: Anthropology

UF CUM Undergraduate GPA: 3.75
UF CUM Grade Points: 443.37
UF CUM Hours Carried: 118.00
Total Hours: 166.00 ⓘ ^
UF CUM Hours Earned: 166.00
Transfer Hours: 0.00

Summer 2012 ^

UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 4.00 Hours Carried: 6.00 Hours Earned: 6.00 Grade Points Earned: 24.00

SESSION: JULY-AUGUST 6 WEEKS

Course	Grade	Credit Attempted	Credit Earned	Credit for GPA	Grade
CLP3144 (14124) Abnormal Psychology	A	3.00	3.00	3.00	A

CLT3370 (13960)	Myths Greeks & Romans	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
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Fall 2012



CREDIT BY EXAM

Hours Earned: 45.00

Hours Carried: 0.00

Grade Points Earned: 0.00

Advanced Placement AMH2010	United States to 1877	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement AMH2020	US Since 1877	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement AML2070	Survey of Am Lit	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement ARH2050	Intro Hist of Art 1	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement ARH2051	Intro Hist of Art 2	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement CHM2045	General Chemistry	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement CHM2045L	General Chemistry Lab	Grade: P	Credit Attempted: 1.00	Credit Earned: 1.00	Credit for GPA: 0.00	Grade P
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Advanced Placement ENC1101	Expos and Argu Writing	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade P
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Advanced Placement						Grade
ENC1102	Argument and Persuasion	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
EUHT000	Transfer EUH Course	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
MAC2311	Analyt Geom and Calc 1	Grade: P	Credit Attempted: 4.00	Credit Earned: 4.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
PHY2053	Physics 1	Grade: P	Credit Attempted: 4.00	Credit Earned: 4.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
PHY2053L	Lab for Phy 2053	Grade: P	Credit Attempted: 1.00	Credit Earned: 1.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
POS2041	American Federal Govt	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
PSY2012	General Psychology	Grade: P	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
WOHT000	Transfer WOH Course	Grade: P	Credit Attempted: 2.00	Credit Earned: 2.00	Credit for GPA: 0.00	P
Advanced Placement						Grade
WOHT000	Transfer WOH Course	Grade: P	Credit Attempted: 1.00	Credit Earned: 0.00	Credit for GPA: 0.00	P

Maximum 45 semester hours awarded by exam

UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences
Level: Undergraduate

Term GPA: 3.80 Hours Carried: 15.00 Hours Earned: 15.00 Grade Points Earned: 57.00

CCJ3024 (12223)	Adv Prin Crim Justice	Grade: A-	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A-
GEA1000 (13911)	Geog Changing World	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
HUM2305 (14617)	What Is the Good Life	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
POT2002 (17505)	Intro Political Theor	Grade: B+	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade B+
STA2023 (18049)	Intro to Statistics 1	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
Requirement: Math Requirement		Req. Grade: S				

Communication & Computation complete

Spring 2013



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 3.53 Hours Carried: 15.00 Hours Earned: 15.00 Grade Points Earned: 53.01

CBH3003 (16684)	Comparative Psychol	Grade: B	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade B
CJL2000 (17261)	Law & Legal Process	Grade: A-	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A-
INR2001	International Relations	Grade:	Credit	Credit	Credit for	

(14410)	international relations	B+	Attempted: 3.00	Earned: 3.00	GPA: 3.00	Grade B+
SPC2608 (11033)	Intro Public Speaking	Grade: A-	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A-
SYG2000 (10775)	Princpls of Sociology	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A

Fall 2013



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 3.58 Hours Carried: 12.00 Hours Earned: 12.00 Grade Points Earned: 42.99

ANT2410 (18552)	Cultural Anthropology	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
BSC2009 (17851)	Biological Sciences	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
CJL3038 (17167)	Law and Society	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
INR3034 (12424)	Politics World Econ	Grade: C+	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade C+

Spring 2014



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 3.93 Hours Carried: 15.00 Hours Earned: 15.00 Grade Points: 59.01

Term: Spring 2013		Hours Carried: 1.00	Hours Earned: 1.00	Grade Points Earned:		GPA:
CJJ4010 (11978)	Juvenile Justice	Grade: A-	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A-
DEP3053 (12240)	Development Psychol	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
POS4931 (13905)	Money & Politics	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
PSY3213L (13707)	Lab Methods Psychol	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
STA3024 (18523)	Intro to Statistics 2	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
Requirement: Math Requirement		Req. Grade: S				

Summer 2014



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences

Level: Undergraduate

Term GPA: 3.81 Hours Carried: 7.00 Hours Earned: 7.00 Grade Points Earned: 26.68

SESSION: JUNE-AUGUST 6 WEEKS

ECO2013 (14590)	Prin Macroeconomics	Grade: A-	Credit Attempted: 4.00	Credit Earned: 4.00	Credit for GPA: 4.00	Grade A-
EXP3604 (12806)	Cognitive Psychology	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A

Fall 2014



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 3.83 Hours Carried: 14.00 Hours Earned: 14.00 Grade Points Earned: 53.69

ANT4740 (10714)	Intro Forensic Sci	Grade: A-	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A-
CCJ3701 (11401)	Res Meth Criminology	Grade: A	Credit Attempted: 4.00	Credit Earned: 4.00	Credit for GPA: 4.00	Grade A
Requirement: Writing Requirement 4000 Words		Req. Grade: S				
ECO2023 (12501)	Prin Microeconomics	Grade: A-	Credit Attempted: 4.00	Credit Earned: 4.00	Credit for GPA: 4.00	Grade A-
PPE3003 (19305)	Psychol of Personalty	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A

Spring 2015



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 3.53 Hours Carried: 13.00 Hours Earned: 13.00 Grade Points Earned: 45.99

ANT3520 (16306)	Skeleton Key Forensic	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
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CCJ4014 (16995)	Criminological Theory	Grade: B+	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade B+
CLP4110 (17645)	Eating Disorders	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
MAN3025 (13672)	Prins of Management	Grade: B	Credit Attempted: 4.00	Credit Earned: 4.00	Credit for GPA: 4.00	Grade B

Fall 2015



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Term GPA: 3.77 Hours Carried: 9.00 Hours Earned: 12.00 Grade Points Earned: 33.99

ANT2000 (16461)	General Anthropology	Grade: B+	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade B+
CCJ4940 (17341)	Law Internship	Grade: S	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 0.00	Grade S
EAB3002 (18229)	Princ Behav Analysis	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
SOP3004 (11200)	Social Psychology	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A

Spring 2016



UNIVERSITY OF FLORIDA

College: The College of Liberal Arts and Sciences Level: Undergraduate

Sciences

Term GPA: 3.91 Hours Carried: 12.00 Hours Earned: 12.00 Grade Points Earned: 47.01

ANT4930 (10641)	Soc & Pol Change Mena	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
CCJ4934 (11494)	Investigations	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
PSY4930 (13844)	Evolutionary Psych	Grade: A	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A
SOP4704 (19439)	Political Psych	Grade: A-	Credit Attempted: 3.00	Credit Earned: 3.00	Credit for GPA: 3.00	Grade A-

Degrees Awarded



Awarded: Bachelor of Science

Graduated: 5/3/2016

Major: Psychology

Honors: Cum Laude

Cumulative GPA: 3.75 Grade Points: 443.37 Earned Hours: 166.00 Hours Carried: 118.00

Awarded: Bachelor of Arts

Graduated: 5/3/2016

Major: Criminology

Honors: Cum Laude

Minor: Anthropology

Cumulative GPA: 3.75 Grade Points: 443.37 Earned Hours: 166.00 Hours Carried: 118.00

SHEARMAN & STERLING LLP

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mark.lanpher@shearman.com
202.508.8120

SUBMITTED VIA OSCAR

September 27, 2021

To Whom It May Concern

Dear Your Honor:

I am writing to provide a recommendation for Gabrielle Leeman, who I understand has applied for a clerkship in your chambers. I am the Head of Shearman & Sterling's Washington D.C. office, and I cannot recommend Gabi highly enough.

I had the pleasure of working with Gabi this past summer, as she was a summer associate in our office. It was an odd summer. Our firm decided to hold our summer program remotely due to the ongoing COVID-19 pandemic, and so there were limited opportunities for in-person interaction with Gabi or our others summer associates. I worried at the start of the summer that Gabi and other summer associates may struggle to integrate. Gabi, however, rose to the challenge and then some. She engaged with partners and associates across the office; she consistently reached for work; and the work she produced was excellent. Simply put, she quickly demonstrated that she would be a terrific lawyer and colleague, and we were delighted to make her an offer of full employment for after she graduates.

I worked with Gabi most closely on a complex white collar matter representation for an individual client who was the subject of a grand jury investigation. Gabi did extensive research for me on Fifth Amendment issues and risks presented by a parallel civil case (where I had her produce a memo on the strengths of a plaintiff's motion and identify possible responses). The legal analysis and work product was terrific; and more impressive to me was Gabi's quick ability to grasp the issues and ask the right questions when she did not understand something. Gabi also did work for me in connection with an FCPA investigation, where she demonstrated a real attention to detail and ability to marshal facts in an organized and clear fashion, and I know she did work for other partners and associates that was equally well-received.

I can also say that working with Gabi was simply a pleasure. I only met her in person a handful of times, given the pandemic, but both over video conferences and in person I found her incredibly easy to work with. I know that others in my office had the same impression – with

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AMERICAS/2022720909.1

September 27, 2021

some summer associates, we wonder whether they will be good colleagues, but we definitely had no such concerns with Gabi. She treated everyone with respect and a smile.

I clerked twice at the start of my legal career – first for Chief Judge Edward R. Korman on the United States District Court for the Eastern District of New York, and then for Judge Reena Raggi on the United States Court of Appeals for the Second Circuit. Those two years were invaluable to me, and so I am delighted that Gabi is applying to clerk with your chambers – I encouraged her to apply, and have no doubt that she would be a terrific clerk.

If you have any questions, I would be happy to discuss.

Very truly yours,

Mark Lanpher

Mark Lanpher



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20001*

September 30, 2021

OSCAR

Online System for Clerkship Application and Review

Re: Gabrielle Leeman

Dear sir or madam,

I write to highly recommend Gabrielle Leeman.

I worked with Ms. Leeman when I was the lead trial attorney in a substantial Antitrust Division merger case, *United States v. AT&T and Time Warner* (D.D.C, filed 2017). For this case, Ms. Leeman was the lead paralegal on the Antitrust Division trial team. I was able to observe her abilities on a daily basis.

The job of lead paralegal on a case going to trial is a responsibility that we entrust only to a person who has demonstrated good judgment, leadership and personnel skill, and the ability to contribute to complex factual analysis. Ms. Leeman displayed all of these abilities. She had a good grasp of facts, as well as insight into what facts might be useful in particular portions of the case. She is smart, and she quickly grasped the legal concepts that applied in this challenging case and was therefore able to help us identify facts relevant to the law.

She had excellent follow-through on any task she undertook. She displayed the foresight to anticipate issues so that they did not become problems. And she had the equanimity to deal with matters that did become problems. She was thorough and careful. During the trial, she was in court virtually every day and ensured that everything ran well.

She led a team of paralegals and managed those resources well. She was respected and liked both by the attorneys who went to her for help and by the paralegals that she was responsible for managing. She was appropriately responsive to all the many "bosses" that come with being a lead paralegal in a large case in a substantial institution.

Based on all that I know, she would be an excellent judicial clerk, and I recommend her highly.

Yours truly,

/s/

Craig W. Conrath
Director of Civil Litigation

The George Washington University Law School
2000 H St NW
Washington, DC 20052

March 24, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend Gabi Leeman for a clerkship in your chambers. She is an outstanding law student with excellent grades, and I expect she will graduate in the top 5-10% of her class of 600 students. She also has impressive work experience, including as an intern for a federal district court judge. She merits your very serious consideration.

I first met Gabi because she was in my fall semester Civil Procedure class during her first year. This was a small section class, with only about 35 students, so I got to know them well. Gabi was one of the strongest students. She wasn't one of those people who raises her hand all the time just to hear herself talk, but whenever I called on her, she gave a clear, confident answer that easily demonstrated how well-prepared she was and how thoroughly she had digested the material. My experience is that the students who really get into Civil Procedure are the ones who are likely to excel as lawyers and clerks, because most of what goes on in the real world of law involves precise parsing of detailed legal regimes, and Civil Procedure really establishes that path.

It is important to note that Gabi is strongly engaged in the real world of law, not just the academic side. She worked for three years as a paralegal at the US Department of Justice before law school, and as a student she has worked for Shearman & Sterling and served as an intern for a federal district court judge and at the US Attorney's office. And all of this was on top of writing an ambitious note for the George Washington University Law Review and serving as a member of the Moot Court Board! In short, Gabi is a doer, and she will surely bring a very strong work ethic and attention to detail to her work as a clerk in chambers.

Finally, Gabi has a kind, unpretentious manner that will almost certainly blend well in chambers. In sum, Gabi is a friendly, outgoing, mature person with great skills and a strong work ethic. If you consider her, I promise you won't be disappointed. Please feel free to contact me if there is any further information I can provide.

Best regards,

Paul Schiff Berman

Paul Berman - pberman@law.gwu.edu - 202-569-6837

GABRIELLE LEEMAN

gleeman@law.gwu.edu – 561.699.6745 – 360 H Street NE, Apt. 434, Washington, DC 20002

WRITING SAMPLE

The attached writing sample is a bench memorandum I drafted during my Judicial Lawyering course in Fall 2020. This memorandum considers the merits of an inmate’s motion for compassionate release and reduction in sentence in light of changed circumstances due to the COVID-19 pandemic. This memorandum is not based on a real case and does not violate any chambers confidences. This memorandum is entirely my own and has not been edited or changed by Judge Iscoe nor his law clerks.

Memorandum**To:** Judge Iscoe**From:** Gabrielle Leeman**Date:** November 15, 2020**Re:** *United States v. Smith*, Case No. Judicial Lawyering Fall 2020

I. Introduction

Before this Court is Defendant Ryan Smith's Motion for Compassionate Release under the COVID-19 Response Supplemental Emergency Amendment Act of 2020, D.C. Code § 24-403.04 and a Reduction of Sentence and Immediate Release under the Superior Court Rules of Criminal Procedure 35(b). This memorandum concludes that Defendant Smith has failed to show compassionate release is warranted under either provision. Accordingly, this Court should deny Defendant's Motion for Compassionate Release.

II. Factual Background

Defendant Ryan Smith is currently in the custody of the Bureau of Prisons (BOP) after pleading guilty to one count of Second Degree Child Sexual Abuse (Aggravating Circumstances) for sexually assaulting his then-girlfriend's son on multiple occasions when the child was four to five years old. Def.'s Mot. at 4; Gov't Resp. at 1. Smith was sentenced to 96 months incarceration, five years of supervised release, and is required to register as a sex offender. Def.'s Mot. at 4. Additionally, in a case in the state of Maryland arising from the same facts and circumstances, Smith similarly entered a guilty plea and was sentenced to eight years of incarceration, suspended as to all but six-and-a-half years, to run concurrently with the sentence imposed by the District of Columbia. *Id.*; Gov't Resp. at 8.

Smith is currently incarcerated at FCI Cumberland and has served approximately 47 months of his 96-month sentence. Def.’s Mot. at 1, 4. Smith is eligible for release to home detention on October 28, 2022. *Id.* at 4. Smith is now seeking compassionate release under the COVID-19 Response Supplemental Emergency Amendment Act of 2020, D.C. Code § 24-403.04 (hereinafter “COVID-19 Emergency Act”) and a Reduction of Sentence and Immediate Release under Superior Court Rule of Criminal Procedure 35(b), due to extenuating circumstances caused by the COVID-19 pandemic. Smith claims that, because he allegedly suffers from sickle cell disease, which makes him exceptionally vulnerable to contracting COVID-19 and experiencing grave outcomes if contracted, *see* Def.’s Mot. at 9, compassionate release is warranted.

III. Legal Standard

Defendant first seeks compassionate release under the COVID-19 Emergency Act. The Act provides in relevant part:

(a) Notwithstanding any other provision of law, the court may modify a term of imprisonment if it determines the defendant is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a) and evidence of the defendant’s rehabilitation while incarcerated, and:

....

(3) Other extraordinary and compelling reasons warrant a modification, including:

(A) A debilitating medical condition involving an incurable, progressive illness, or a debilitating injury from which the defendant will not recover;

(B) Elderly age, . . . :

....;

(C) Death or incapacitation of the family member caregiver of the defendant’s children; or

(D) Incapacitation of a spouse or a domestic partner when the defendant would be the only available caregiver for the spouse or domestic partner.

D.C. Code § 24-403.04. As the movant, Defendant bears the burden to establish that he is eligible for a sentence reduction. *See, e.g., United States v. Jones*, 836 F.3d 896, 899 (8th Cir. 2016); *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014).¹ In evaluating the dangerousness posed by a defendant, the trial court must consider (1) “The nature and circumstances of the offense charged, including whether the offense is a crime of violence, . . . or involves a minor victim . . .;” (2) “The weight of the evidence against the person;” (3) “The history and characteristics of the person;” and (4) “The nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release . . .”. 18 U.S.C. § 3142(g). The Court must also take into consideration “the goals of imposing the sentence.” *Id.* § 3553(a).

Defendant also seeks a Reduction of Sentence and Immediate Release under Superior Court Rules of Criminal Procedure 35(b), which provides that:

[a] motion to reduce a sentence may be made no later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation.

D.C. Super. Ct. Crim. R. 35(b)(1).

¹ Federal decisions are highly persuasive because the COVID-19 Emergency Act was modeled after the federal compassionate release statute. *See* D.C. Council, Twenty-Seventh Legislative Meeting, COVID-19 Response Supplemental Emergency Amendment Act of 2020, 823-0733 (Apr. 7, 2020), http://video.oct.dc.gov/VOD/DCC/2020_04/04_07_20_COW.html.

IV. Analysis

A. COVID-19 Emergency Act

Under the COVID-19 Emergency Act subsection (a)(3)—“Other extraordinary and compelling reasons”—Defendant argues that compassionate release is appropriate because he has a particularly significant risk of serious illness, complications, or death from COVID-19 due to an underlying medical condition. Def.’s Mot. at 1. Defendant does not assert that he qualifies under any of the four enumerated reasons. *See* D.C. Code § (a)(3)(A)–(D). Rather, Defendant argues, and the Government does not contest, that the statute’s use of the word “including” to introduce the four reasons suggests the list is non-exhaustive. Def.’s Mot. at 10; Gov’t Resp. at 15. Many courts have read compassionate release statutes similarly. *See* Def.’s Mot. at 11–15 (collecting cases). I therefore recommend this Court accept the Parties’ reading of the statute to provide for reasons beyond those specifically enumerated and proceed to consider whether Defendant has demonstrated such extraordinary and compelling reasons.

1. “Extraordinary and Compelling Reasons”

Defendant argues that his alleged diagnosis of sickle cell disease presents extraordinary and compelling reasons because it puts him among those at higher risk from COVID-19. *See* Centers for Disease Control and Prevention (CDC), Groups at Higher Risk for Severe Illness, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medicalconditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html. The CDC has recognized that sickle cell disease can increase an individual’s risk of contracting COVID-19 and the risk of serious complications and even death if contracted. *Id.*

But Defendant has not provided documentation supporting his alleged diagnosis. Def.’s Mot. at 2, n.1. In place of this documentation, Defendant has pointed to his family’s history of sickle cell anemia, his mother’s confirmation “that a doctor identified this trait in Mr. Smith when he was a child,” Defendant’s alleged later diagnosis as an adult, in addition to Defendant’s personal narratives of his suffering allegedly caused by this condition. *Id.*; *see also id.* at 17, 23–24. The Government strongly contests Defendant’s alleged diagnosis. Gov’t Resp. at 15–16. Defendant is classified as “Care Level 1,” which is “the lowest level of medical designation for inmates who are ‘healthy’ or require ‘simple chronic care.’” *Id.* at 16. Additionally, Defendant is cleared for “regular duty” and has taken athletic courses. *Id.* While sickle cell disease may increase a person’s susceptibility to contracting COVID-19 and risk of complications, other courts have found that “[t]his condition—taken by itself—would likely not rise to the level necessary to be considered extraordinary or compelling without [] definitive medical documentation.” *United States v. Cribbs*, No. 8-CR-1320-CJW, 2020 WL 6470181, at *4 (N.D. Ia. Nov. 3, 2020).

However, even if the Court accepts as true Defendant’s sickle cell diagnosis, Defendant’s condition is not significant enough to warrant compassionate release. Defendant alleges that he experiences “flare-ups,” which cause him severe pain in his hips and legs that inhibit his ability to get out of bed. Def.’s Mot. at 17. But these facts do not suggest Defendant suffers from such an extreme form of the disease as those other inmates who have been granted compassionate release because of their sickle cell disease. *See United States v. Morgan*, No. 4:92-cr-4013, ECF Nos. 2334 at 3, 2337 (N.D. Fla. Apr. 27, 2020) (granting compassionate release for defendant who “has suffered with the most severe form of Sickle Cell Disease With Crisis his entire life,” leading to multiple hospitalizations and ICU stays).

The Court must consider Defendant's health as a whole, taking into account other factors such as age and overall health. Given that Defendant is only 25-30 years old, appears to have less severe symptoms, generally engages in regular activity, and is classified at the lowest level of care, Defendant's sickle cell alone is likely not significant enough to warrant extraordinary and compelling reasons. *See, e.g., Cribbs*, 2020 WL 6470181, at *4 (finding defendant's hemoglobin disorder supports the conclusion that extraordinary and compelling reasons exist, after taking into consideration defendant's other heightened risk factors such as age and obesity).

As Defendant points out, the possible adverse reactions to COVID-19 for those suffering from sickle cell disease can be severe. *See* Def.'s Mot. at 20 ("[T]he mortality rate for COVID-19 patients who are living with sickle cell disease is at least twice as high as that of the general population."); *id.* ("[S]ickle cell patients 'are also at higher risk of needing acute medical care, including the use of ventilators and stays in Intensive Care Units.'"); *id.* ("[T]he CDC has [] recognized that those with . . . sickle cell disease[] may be 'at higher risk for severe illness from COVID-19'"). But, while not minimizing the extent of Defendant's sickle cell and the danger posed by COVID-19, Defendant has likely failed to carry his burden in showing his particular condition constitutes "extraordinary and compelling reasons."

However, due to the intimate nature of medical conditions, I recommend this Court follow others faced with the similar question of what combination of health conditions makes for "extraordinary and compelling reasons" and decline to make a finding on this point. Instead, the Court can deny the motion because, as addressed below, Defendant has failed to prove he does not pose a danger to society. *See, e.g., United States v. Evans*, No. 1:18-cr-00266-JRS-MJD, 2020 WL 3447770, at *3 (S.D. Ind. June 24, 2020).

2. COVID-19 at FCI Cumberland

In addition to alleging “extraordinary and compelling reasons,” many courts hold that the defendant must also allege that “the facility where [he] is housed has conditions such that its inmates are at a high risk of contracting COVID-19.” *United States v. Johnson*, No. 2:16-cr-00163-01, 2020 WL 6491314, at *3–4 (S.D.W.Va. Nov. 3, 2020); *see also United States v. Raia*, 954 F.3d 594, 594 (3d Cir. 2020) (finding the possibility that COVID-19 may spread to a prison cannot independently justify compassionate release); *United States v. Penaloza*, No. 19-238, 2020 WL 1555064, at *2 (D. Md. Apr. 1, 2020) (finding the presence of COVID-19 in a prison does not necessarily translate to release of a defendant).

Here, while Defendant has pointed to significant problems at FCI Cumberland that may put him at a higher risk for contracting and suffering complications from COVID-19, including overcrowding, lack of access to medical care, and significant delays in obtaining treatment, Defendant fails to show that these conditions have actually led to increased COVID-19 cases or deaths. Def.’s Mot. at 21. As of July 2020, FCI Cumberland had minimal COVID-19 exposure—zero positive cases, zero deaths, and eight recovered inmates and staff. Gov’t Resp. at 13. These statistics suggest that FCI Cumberland has been able to manage the exposure and spread of COVID-19.

3. Dangerousness

Defendant has failed to establish that he is no longer a danger to the community. In addition to showing “other extraordinary and compelling reasons,” the defendant must show that he “is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §§ 3142(g) and 3553(a)” and that there is “evidence of the

defendant's rehabilitation while incarcerated." D.C. Code § 24-403.04(a); *see supra* III. These factors are addressed below:

Nature and Circumstances of the Offense. First, it cannot be disputed, and Defendant does not dispute, the extreme seriousness of his offense. Def.'s Mot. at 29. Defendant engaged in ongoing sexual abuse of a child to whom he acted as a caretaker, and arguably a father-figure. *Id.*; Gov't Resp. at 18. Continued sexual assault of a child of whom Defendant was responsible for strongly supports continued incarceration.

Weight of the Evidence. Second, the fact that Defendant pleaded guilty in this case and in another jurisdiction weighs in favor of continued incarceration.

Defendant's History and Characteristics. Third, Defendant had no prior criminal convictions and claims he was "intellectually delayed[]" and grappling with the trauma of his own sexual abuse" when he committed this crime. Def.'s Mot. at 29; Gov't Resp. at 18. The Government counters Defendant's alleged intellectual impairments by arguing that he was "canny enough" to take advantage of the times the victim's mother was at work to abuse her son, told the victim not to tell anyone about the incidents, and lied to investigators about the extent of the abuse. Gov't Resp. at 18. Although these facts are concerning, they fail to disprove the impact of defendant's history of intellectual impairments and the abuse he himself suffered. As such, this factor weighs in favor of release.

Nature and Seriousness of the Danger Posed to the Community. Fourth, the Government has provided substantial evidence to show that defendant's release would endanger the lives and well-being of the defendant's victim and the child's family. The victim's mother indicated that the victim continues to feel traumatized by the incident and the possibility of Defendant being released "has caused the victim renewed stress and fear." *Id.* Further, Defendant's family

continues to disbelieve that defendant even committed this crime and has allegedly made hostile comments to the victim's mother. *Id.* at 19. Defendant insists that he is rehabilitated and that his risk of recidivism is low.² While this may be true, Defendant's early release will inevitably have damaging impact on the well-being of his victim and victim's family. As such, this factor weighs in favor of continued incarceration.

Purpose of Sentence. Lastly, the Court should consider if the length of time already served by defendant meets the general goals of sentencing. *See generally* 18 U.S.C. § 3553(a). Defendant has served approximately 47 of his 96-month sentence. Def.'s Mot. at 1. Although this amount of time is significant, it is less than half of Defendant's total sentence. Further, it fails to account for the fact that this sentence was imposed by a plea agreement, in response to which the Government dismissed the remaining counts of the indictment. Gov't Resp. at 8. It additionally fails to account for the fact that Defendant's Maryland sentence was suspended, and to run concurrently, with his sentence in the District of Columbia. Def.'s Mot. at 4. As such, this factor also weighs in favor of continued incarceration.

Overall, even though Defendant is unlikely to recidivist, given the severity of Defendant's crime, the ongoing distress and fear suffered by the victim and his family, the hostility that defendant's family supposedly shows towards the victim's family, and the need for the sentence to reflect the seriousness of the offense, I recommend this Court find that Defendant has failed to carry his burden of showing he is no longer a danger to the community.

² Defendant points to multiple factors in support of his argument that he is rehabilitated and is unlikely to recidivist, including: (1) adjusting to prison life; (2) taking GED courses; (3) lack of infractions showing any assaultive, violent, or dangerous conduct while incarcerated; (4) analysis by the pre-sentencing reporter and BOP itself concluding that defendant "is not at high risk of sex offense recidivism;" (5) a supportive family and community network; and (6) having spent significant time incarcerated. *See* Def.'s Mot. at 28–31.

B. Rule 35(b)

Defendant further argues that this Court should reduce his sentence under Rule 35(b) because it is now unduly severe in light of COVID-19. Def.'s Mot. at 32. Rule 35(b) provides that "[a] motion to reduce a sentence may be made no later than 120 days after the sentence is imposed . . .". D.C. Super. Ct. Crim. R. 35(b)(1). On its face, Defendant's Rule 35(b) request is untimely because it is well outside the 120-day limit.³ Defendant argues, however, that this Court has discretion to relax this 120-day time frame "when the ends of justice so require," *Schact v. United States*, 398 U.S. 58, 64 (1970), because Rule 35(b) is a "claim-processing rule." *Smith v. United States*, 984 A.2d 196, 201 (D.C. 2009). Accordingly, multiple Superior Court judges have considered Rule 35(b) claims outside the 120-day window. *See* Def.'s Mot. at 34–35 (collecting orders). The Government argues, however, that "[w]hen a mandatory claim-processing rule is properly invoked by a party," as it is here, "it *must* be enforced by the court." *Deloatch v. Sessoms-Deloatch*, 229 A.3d 486, 491 (D.C. 2020) (emphasis added).

However, even if this Court accepts Defendant's claim that the Court *may* relax the timetable if the "ends of justice so require," Defendant here has failed to make such a showing. *Schact*, 398 U.S. at 64. Even though the COVID-19 pandemic is undoubtedly a "circumstance[] largely beyond [defendant's] control," *id.*, Defendant has failed to prove (1) he suffers from sickle cell disease, (2) if he does, that it is of such an extreme type that he faces grave risk of serious illness, complications, or death from COVID-19, (3) that the risk of exposure to COVID-19 in FCI Cumberland is particularly great, and (4) that he is no longer a danger to the community. This Court should thus decline to reduce Defendant's sentence under Rule 35(b).

³ Defendant has been incarcerated already for 47 months.

C. Concurrent Sentence

The Government further reminds the Court that Defendant is serving a concurrent sentence in Maryland, and thus Defendant's proposed reentry and release plan necessarily relies on the assumption that the Court in that jurisdiction will similarly grant some form of release. Gov't Resp. at 28. That jurisdiction maintains the position that it is unaffected by the litigation in this case. *Id.* Defendant neglects to address this issue and the possibility of its effect on this Court's analysis. However, because Defendant has not made out a sufficient case to warrant compassionate release under the COVID-19 Emergency Act nor Rule 35(b), I do not address the merits of this issue further and only raise for the Court's awareness.

V. Conclusion

For the foregoing reasons, this Court should deny Defendant's Motion for Compassionate Release under the COVID-19 Emergency Act and a Reduction of Sentence and Immediate Release under Rule 35(b).

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Date of JD/LLB	May 1, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Columbia Journal of Transnational Law
Moot Court Experience	Yes
Moot Court Name(s)	Foundation Moot Court

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This applicant has certified that all data entered in this profile and any application documents are true and correct.